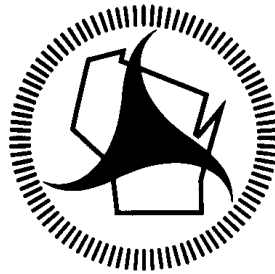


PROCUREMENT MANUAL

**FOR THE ACQUISITION OF GOODS AND SERVICES UNDER
FEDERAL TRANSIT ADMINISTRATION GRANT PROGRAMS**

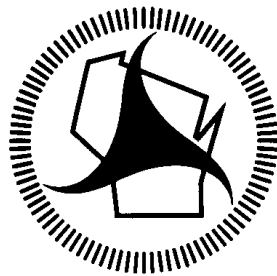


**WISCONSIN DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION INVESTMENT MANAGEMENT
BUREAU OF TRANSIT AND LOCAL ROADS**

ISSUED: AUGUST 1999

PROCUREMENT MANUAL

**FOR THE ACQUISITION OF GOODS AND SERVICES UNDER
FEDERAL TRANSIT ADMINISTRATION GRANT PROGRAMS**



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Introduction

State and federal regulations regarding procurement of goods and services are complex, detailed, and often change to reflect changes in legislation. For local government officials administering federal grants, it is sometimes difficult to maintain current knowledge of these requirements to ensure their municipality's compliance. However it is very important that local units of government conduct their procurements in a manner which is consistent with all pertinent federal regulations. When a local unit of government contracts for and accepts capital assistance funds they also accept the responsibility of maintaining oversight of the procurement process and assuring its federal compliance. It is for this reason that the Wisconsin Department of Transportation (WisDOT) offers this manual in an effort to assist and guide local officials through the procurement process.

In accordance with the U.S. Department of Transportation, Federal Transit Administration (FTA) requirements, WisDOT has developed this procurement manual to assist grant subrecipients with the procedures to acquire goods and services funded by capital or operating grant programs. These procedures govern procurement activities under the following grant programs administered by WisDOT:

- Section 5307 Urban Area Formula Program (as noted)
- Section 5309 Major Capital Program (as noted)
- Section 5311 Nonurban Area Formula Program

Subrecipients of federal capital assistance shall comply with all applicable requirements under FTA program administration regulations including:

- Circular 4220 Third Party Contracting Requirements
- Circular 5010 Grant Management Guidelines
- Circular 9030 Urbanized Area Formula Program
- Circular 9040 Non-Urbanized Area Formula Program Guidance/Grant Application Instructions

This manual is not intended to be an "all inclusive" source of information. There may be instances in which subrecipients experience procurement activities or situations not addressed in this manual. We encourage you to contact WisDOT staff (see Appendix I) for assistance with your procurement.

Content and Applicability

For the convenience of our subrecipients, we have divided this manual into *five* main sections.

Section One is an overview of the procurement process including: general procurement procedures, a subrecipient checklist, and a diagram of the WisDOT procurement review and approval process. The checklist offers an outline of the procurement process to follow. Necessary forms, certifications, and documentation for WisDOT review are also identified in the checklist.

Section Two of the manual provides more detail with regard to the procurement process and the reimbursement process.

Section Three provides a description of several important federal requirements relating to the procurement of goods and services, and the related documentation required for WisDOT review.

Section Four contains a description of procedures for the procurement of *specific types of goods and services* such as vehicles and equipment, consultant services, transportation services, etc.

Section Five is the Appendix, which contains a copy of the most recent FTA Circular 4220 Third Party Contracting Requirements, forms *required* by WisDOT, and samples of other forms used in the procurement of goods or services. The Appendix also includes a listing of contact persons, a glossary, and other references so that subrecipients can obtain further direction and/or guidance. Appendix I lists WisDOT staff available to assist with subrecipient procurement questions.

This manual is intended to assist subrecipients with their procurement of services, vehicles and equipment while ensuring compliance with state and federal procurement regulations. To facilitate your procurement, we recommend that you become familiar with the contents of this manual and follow these essential steps:

1. Review the subrecipient Procurement Process Checklist and grant contract language;
2. Become familiar with the procurement process details described in Section Two;
3. Contact WisDOT staff with your concerns or questions; and
4. Complete each requirement, including local documentation, and transmit the documentation to WisDOT for review and concurrence. To avoid delays in the procurement process, provide complete and accurate information with your submittal.

In addition, subrecipients are encouraged to become familiar with the FTA circulars applicable to their funding programs as well as the FTA Best Practices Procurement Manual. Copies of these publications can be obtained from FTA's Regional Office in Chicago, IL. They also are available through the internet at FTA's web site: **www.fta.dot.gov**. Because of the importance of meeting the requirements of Circular 4220 Third Party Contracting Requirements, a copy is included in Appendix A.

The procedures outlined in this manual become effective ***September 1, 1999***.

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1. OVERVIEW OF PROCUREMENT REQUIREMENTS

1.1 GENERAL PROCUREMENT REQUIREMENTS

When the subrecipient intends to conduct a procurement of goods or services funded with an FTA grant, it is the responsibility of that subrecipient to manage the entire procurement process and ensure its compliance with relevant FTA requirements. This section of the manual provides a summary of the requirements that subrecipients must comply with in the procurement of goods or services. More detailed information on each of these requirements can be found in subsequent sections of this manual.

WisDOT specifies in capital contracts that the subrecipient must complete all purchases within a period of three years. The funds will lapse at the end of the three year period if the subrecipient has not implemented all purchases. WisDOT may however exercise its discretion to approve an extension to a grant contract, on a case-by-case basis, and depending on the type of purchase (e.g. facility construction), if the subrecipient demonstrates that “reasons beyond its control” - lack of planning excluded - prevented compliance with this requirement and the subrecipient shows: 1) that a good faith effort has been made to complete the purchases, and 2) that it can complete such purchases within a reasonable amount of time.

Section 5307, 5309, and 5311 subrecipients must comply with the general procurement standards applicable to Third Party Procurements as described in FTA Circular 4220 Third Party Contracting Requirements (see Appendix A). These requirements are listed below and are discussed in more detail later in this section and in Appendix A:

1. Conformance with State and Local Law
2. Contract Administration System
3. Written Standards of Conduct
4. Ensuring Most Efficient and Economic Purchase
5. Intergovernmental Procurement Agreements
6. Use of GSA Schedules And Excess Or Surplus Federal Property
7. Use of Value Engineering in Construction Contracts
8. Awards to Responsible Contractors
9. Written Record of Procurement History
10. Use of Time and Materials Type Contracts
11. Subrecipient Responsible for Settlement of Contract Issues/Disputes
12. Written Protest Procedures
13. Contract Period of Performance Limitation to Five (5) Years Inclusive of Options
14. Full and Open Competition
15. Prohibition Against Geographic Preferences
16. Written Procurement Selection Procedures
17. Pre-Qualification Criteria
18. Options

In addition to ensuring adequate and open competition for federally funded purchases of goods or services, Section 5307, 5309, and 5311 subrecipients must ensure bidder/proposer compliance with applicable federal regulations including, among others:

- American with Disabilities Act
- Buy America
- Drug and Alcohol Testing
- Bus Testing
- Federal Motor Vehicle Safety Standards
- Davis Bacon Labor Standards
- Debarment and Suspension
- Lobbying
- Bonding Requirements

While working within the framework of WisDOT and FTA guidelines, Section 5307, 5309, and 5311 subrecipients are responsible for developing all procurement documents and specifications. As a starting point for subrecipients, we offer the Subrecipient Procurement Process Checklist found in Section 1.2. This checklist contains the basic steps of the procurement process. The items are grouped according to the following major categories:

- To Do Before the Procurement Process
- Procurement Packet Preparation
- Conducting the Procurement
- Pre-Award Review and Concurrence Process
- Post-Award and Post-Delivery Activities

Please note that not all of the items in the checklist are required for every procurement. For the benefit of the local official managing the procurement, the items included in the checklist are explained in more detail in Section Two of this manual.

Under the FTA Common Rule, States administer grants following their own requirements, which *can* be more restrictive than those of FTA. In Section Four of this manual State procurement procedures are incorporated into subrecipient procurement documents and processes.

We recommend that you use the Subrecipient Procurement Process Checklist as the framework for your procurement process. You should incorporate suggested, as well as the required, elements in your procurement documents. The suggested elements are based upon the Standard Bus Procurement Guidelines published by the American Public Transit Association (APTA) and from FTA's Best Practices Procurement Manual.

The details of “what to do before the procurement process” will be discussed in later sections of this manual. However, early in the procurement process, subrecipients must arrive at a “best estimate” of the procurement cost. The total procurement cost determines the type of procurement process that must be followed.

- If the ***total purchase is less than \$10,000***, the procurement process is less complicated. The subrecipient may obtain quotations and signed certifications from bidders/proposers. Following delivery and subrecipient acceptance of the goods or services, reimbursement is processed and the purchase is completed.
- When the ***total purchase exceeds \$10,000***, the subrecipient must follow a more detailed process to obtain the goods or services.

The responsibility for documentation of the procurement process rests with the *recipient* of the grant (often times the recipient is WisDOT, depending on grant program). Files must be maintained on all procurement actions. The *subrecipient's* procurement files must be sufficiently detailed to sustain an audit by FTA or WisDOT. Files should contain a "paper trail" which clearly documents what goods or services were purchased, and documents the associated costs. The files must also document compliance with FTA and WisDOT requirements. FTA requires recipients and subrecipients to maintain procurement files and grant files for a period of not less than three years *from the closing of the grant*. This means that the subrecipient should maintain grant files for at least seven years following each purchase.

1.2 SUBRECIPIENT PROCUREMENT PROCESS CHECKLIST

TO DO BEFORE THE PROCUREMENT PROCESS

- _____ Determine Scope of Procurement
- _____ Identify Who Needs to be Involved
- _____ Plan The Procurement Process
- _____ Decide on the Method of Procurement: IFB or RFP

PROCUREMENT PACKET PREPARATION

- _____ Convene Review Committee
- _____ Develop Draft IFB or RFP, including all required clauses
- _____ Develop Technical Specifications and/or Scope of Work
- _____ Identify Potential Bidders/Proposers
- _____ Develop Evaluation Process and Criteria
- _____ Develop Protest Procedures
- _____ Finalize Draft of Bid Package
- _____ **WisDOT Review and Approval of Procurement Packet**

CONDUCTING THE PROCUREMENT

- _____ Finalize IFB/RFP Package
- _____ Advertising And Notifying Potential Bidders/Proposers
- _____ Conduct Pre-Bid or Pre-Proposal Conference (Optional)
- _____ Procedures for Approved Equals (If Applicable)
- _____ Pre-Bid/Pre-Proposal Approved Equals Protests Procedures (If Applicable)
- _____ Bid/Proposal Deadline and Acceptance by the Procuring Agency

PRE-AWARD REVIEW AND CONCURRENCE PROCESS

- _____ Re-Convene Review Committee
- _____ Review Evaluation Process and Criteria
- _____ Evaluate Bids/Proposals for Required Elements/Responsiveness
- _____ **WisDOT Notified of Intent to Award**
- _____ Notify Selected and Rejected Bidders/Proposers
- _____ Handle Intent to Award Protests Using the Local Process

POST-AWARD AND POST-DELIVERY ACTIVITIES

- _____ Issue Purchase Order or Service Contract to Selected Bidder/Proposer
- _____ Monitor Contractor Activities (If Applicable)
- _____ Post-Delivery Inspection of Capital Equipment Purchases
- _____ Complete Required Post-Delivery Audit Forms
- _____ Acceptance, Warranty and Service Arrangements Made with Contractor
- _____ Vehicle Title/Registration - Showing WisDOT as Lien-Holder
- _____ Payment/Reimbursement of the Federal Share of Purchase Cost

1.3 FEDERAL REQUIREMENTS

Subrecipients must comply with all applicable federal procurement requirements when procuring goods and services with FTA funds. The applicability of certain requirements depends upon the nature and value of the purchases and several important requirements are explained in more detail in Section 3 of this manual. The following general requirements are established in FTA Circular 4220 Third Party Contracting Requirements (refer to Appendix A for a complete text of Circular 4220):

1. **Conformance with State and Local Law** - Subrecipients shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable federal law, including the requirements and standards identified in Circular 4220 Third Party Contracting Requirements.
2. **Contract Administration System** - Subrecipients shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
3. **Written Standards of Conduct** - Subrecipients shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or board member of the grantee shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.
4. **Ensuring Most Efficient and Economic Purchase** - Subrecipients procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
5. **Intergovernmental Procurement Agreements** - To foster greater economy and efficiency, subrecipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services. The requirements and standards of Circular 4220 Third Party Contracting Requirements apply to procurements entered into under such agreements using FTA funds.
6. **Use of GSA Schedules And Excess Or Surplus Federal Property** - Once GSA develops procedures, State and local grantees may use Federal supply schedules (FSS) of GSA for the procurement of certain goods and services, 40 U.S.C. § 481(b). Price lists will be available from GSA and may include an administrative fee for GSA in the price of items on the schedule. Subrecipients must contact GSA for guidance on using the GSA supply schedules.
7. **Use of Value Engineering in Construction Contracts** - Subrecipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost.
8. **Awards to Responsible Contractors** - Subrecipients shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a

proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

9. **Written Record of Procurement History** - Subrecipients shall maintain records detailing the history of a procurement. At a minimum, these records shall include:

- the rationale for the method of procurement,
- selection of contract type,
- reasons for contractor selection or rejection, and
- the basis for the contract price

10. **Use of Time and Materials Type Contracts** - Subrecipients will use time and material type contracts only:

- After a determination that no other type of contract is suitable; and
- If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

11. **Responsibility for Settlement of Contract Issues/Disputes** - Subrecipients alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements.

12. **Written Protest Procedures** - Subrecipients shall have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with WisDOT or FTA.

13. **Contract Period of Performance Limitation** - Subrecipients shall not enter into any contract with a period of performance exceeding five (5) years inclusive of options without prior written FTA approval.

14. **Full and Open Competition** - All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- Unreasonable requirements placed on firms in order for them to qualify to do business;
- Unnecessary experience and excessive bonding requirements;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive awards to any person or firm on retainer contracts;
- Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
- Any arbitrary action in the procurement process.

-
15. **Prohibition Against Geographic Preferences** - Subrecipients shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for Architectural and Engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
16. **Written Procurement Selection Procedures** - Subrecipients shall have written selection procedures for procurement transactions. All solicitations shall:
- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
 - Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used.
 - A grantee shall use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. Further, a grantee wishing to use "brand name or equal" must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.
 - Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.
17. **Pre-Qualification Criteria** - Subrecipients shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, subrecipients shall not preclude potential bidders/proposers from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.
18. **Options** - Subrecipients may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a subrecipient chooses to use options, the requirements below apply:
- Evaluation of Options: The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
 - Exercise of Options:
 - A grantee must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

- An option may not be exercised unless the grantee has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

1.4 SUPPLEMENTAL FEDERAL PROCUREMENT REQUIREMENTS

The following are supplemental federal procurement requirements that subrecipients must comply with. Most subrecipient procurements will involve one or more of these requirements.

1. **Procurement procedures** - The subrecipient must have written procurement procedures. The procurement procedures must contain protest procedures. The procurement procedures shall provide for a review of a procurement to avoid duplicative or unnecessary purchases. The procedures shall include all FTA procurement requirements or generally reference FTA requirements. *The purchase of extended warranties or ineligible service agreements with capital grant funds is prohibited.*
2. **Ethical Standards of Conduct** - The subrecipient shall have written standards of conduct regarding potential conflicts of interest.
3. **FTA Required Clauses** - FTA required clauses must be included in the subrecipient procurement process (see Appendix B). The subrecipient intergovernmental agreements for the purchase of goods and services shall have an assignability clause. Any procurements where “piggy-backing” may be involved shall have an assignability clause that provides for the assignment of all or part of the specified deliverables (base and option included) as originally advertised, competed, evaluated, and awarded. In addition, the procurement documents shall contain a minimum and maximum quantity of deliverables. Any contract clauses that unduly restrict competition are prohibited. If a subrecipient is procuring any equipment or materials using option clauses, these must be evaluated at the time of the initial bid with prices established at that time. The use of liquidated damage clauses in subrecipient procurements is mandatory.
4. **Construction Contracts Over \$100,000** - For construction contracts over \$100,000, FTA-accepted local bonding requirements must be met.
5. **Service Contracts** - Any service contracts that exceed five years in total length including base and options require prior written approval from FTA. Competitive procurement requirements must be included in the subrecipient’s third party contract for services funded with federal dollars.
6. **Progress Payments** - Progress payments are not allowed unless the subrecipient has obtained title or possession of the property or taken alternative steps to protect the subrecipient's interest.
7. **Procurement of Buses** - If the subrecipient is purchasing a bus, it must make a determination that the bus has been tested as required prior to the expenditure of FTA funds. If the bus model does not require testing, the subrecipient must obtain a certification from the *manufacturer* (not the vehicle dealer) that the bus does not need to be tested.

1.5 COMPETITIVE PROCUREMENT STANDARD REQUIREMENTS

Subrecipients shall ensure that competitive procurements conform to applicable federal and state laws. The following are WisDOT's minimum standards for competitive procurement.

1.5.1 Procurement Standard Procedures:

Subrecipient procurement standards and procedures must be written and shall provide for open competition. In addition, these documents shall reference standards of conduct in procurement, provide for a review of procurements to ensure against the purchase of duplicative or unnecessary items, contain protest procedures and foster cost-effective purchases. The subrecipient contract administration system shall provide for contractor compliance with the terms, conditions, and specifications spelled out in the contract or purchase order. Subrecipient procurement processes shall provide for adequate documentation of:

- Justification for bidder/proposer selection
- Inclusion of required clauses
- Use of options
- Prohibitions on certain types of payments
- Use of liquidated damages

For bus procurements, in addition to the documentation above, subrecipient procurement processes shall provide for:

- Compliance with bus testing requirements (Altoona Test).
- Compliance with pre-award and post-delivery requirements (Buy America).
- Compliance with Federal Motor Vehicle Safety Standards.

All subrecipients shall certify annually that their procurement systems meet FTA requirements and that they will abide by FTA rules and regulations with respect to the procurement of goods or services. In their annual certification to WisDOT (as part of the operating grant application process), subrecipients certify that their procurements will comply with statutory and regulatory requirements.

1.5.2 Certifications and Forms to be Included in the Procurement Packet

Specific federal certifications and forms which must be included in Section 5307, 5309, and 5311 subrecipient procurement documents are identified below. They will vary by type and value of the procurement, and by funding source. Required forms & certifications are listed in bold type. The forms and their use are discussed in Appendices D and E.

1.5.2.1 Purchases Under \$100,000

- _____ **Overall Federal Regulation Compliance**
- _____ **Certification of Compliance with Bus Testing Requirements**
- _____ **Compliance with Specifications**
- _____ Procuring Agency and Contracting Officer
- _____ Request for Change or Approved Equal
- _____ Acknowledgment of Addenda
- _____ Offeror Service and Parts Support Data
- _____ Form for Proposal Deviation
- _____ Pricing Schedule
- _____ Offer and Award

** More detailed checklists are included in Appendix F*

1.5.2.2 Purchases Over \$100,000

- _____ **Overall Federal Regulation Compliance**
- _____ **Certification of Compliance with Bus Testing Requirements**
- _____ **Compliance with Specifications**
- _____ **Buy America Certification**
- _____ **Debarment and Suspension Certification**
- _____ **Lobbying Certification**
- _____ **DBE Certification (\$250,000 Threshold)**
- _____ **Pre-Award/ Post-Delivery Buy America Certification**
- _____ **Pre-Award/ Post-Delivery Purchaser's Requirements Certification**
- _____ **Pre-Award/ Post-Delivery FMVSS Compliance or Exemption Certification**
- _____ **Post-Delivery Purchaser's Requirements Certification for More Than Ten Buses or Modified Vans**
- _____ Procuring Agency and Contracting Officer
- _____ Request for Change or Approved Equal
- _____ Acknowledgment of Addenda
- _____ Offeror Service and Parts Support Data
- _____ Form for Proposal Deviation
- _____ Pricing Schedule
- _____ Offer and Award

** More detailed checklists are included in Appendix F*

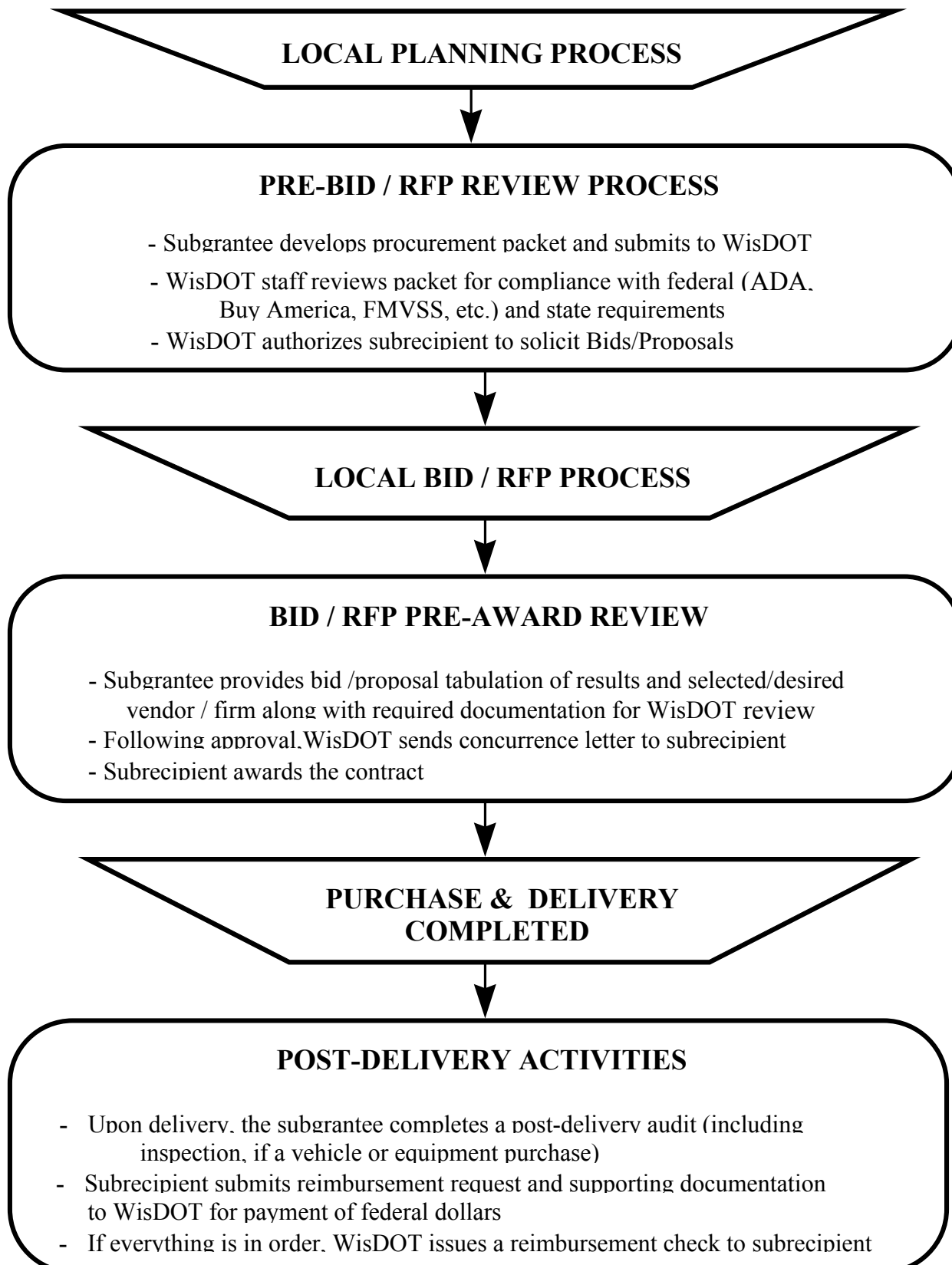
1.6 WISDOT PROCUREMENT REVIEW PROCESS

WisDOT considers the subrecipient procurement to be a local process. The subrecipient is responsible for the procurement of goods and services under its funding contract with WisDOT. WisDOT follows a Procurement Review Process to ensure compliance with federal and state regulations. This review process takes place at three distinct points during the subrecipient's procurement process:

- Pre-Bid/RFP Review Process
- Bid/RFP Pre-Award Review Process
- Post-Delivery Activities

The following diagram illustrates the WisDOT Procurement Review Process. The required forms for subrecipient submittal to WisDOT are included in Appendix D. Appendix F contains checklists WisDOT will use in monitoring a subrecipient's procurement process. The three checklists are to be completed by the subrecipient at appropriate stages in the procurement process and forwarded to WisDOT. Contact the WisDOT staff listed in Appendix I if you have questions or need additional information.

WisDOT PROCUREMENT REVIEW PROCESS



2. SUBRECIPIENT PROCUREMENT PROCESS DETAILS

This section of the manual is intended to explain the requirements of the Subrecipient Procurement Process. The information is presented in the order of the requirements as shown on the checklist in Section 1 of this manual.

2.1 TO DO BEFORE PROCUREMENT PROCESS

2.1.1 Determine the Scope of the Procurement

To begin your procurement, you first need to determine the scope of the procurement and review your grant request. What are your goals? What are you trying to accomplish? Clearly stated goals will help you make effective decisions regarding the scope of the procurement and what and how much to purchase. The scope of your procurement should coincide with your approved grant contract from WisDOT. Once the goals of your procurement are clear, detailed specifications and a procurement packet can be developed.

2.1.2 Identify Who Needs to be Involved

Internal Agency Involvement

Early in the procurement process you should identify the individuals who will be involved. Early attention to this issue will facilitate the overall process and save time in the long term. Depending on the type of procurement being considered, **different functional areas in your organization should have input into the process.** This could include staff from any or all of the following areas: purchasing, engineering, legal, financial/accounting, transit manager, drivers, maintenance staff or others. The following responsibilities should be considered:

- Department initiating the procurement for items to be purchased
- Technical information and requirements
- Required forms, incentives, performance standards, evaluation criteria and desired timetable
- Drivers and maintenance personnel for technical input related to vehicles;
- Finance for invoicing and payment scheduling;
- Legal for contracts, bonding, insurance, certification, procurement timetable

It will be important to evaluate your internal capabilities to determine whether or not outside resources will be needed to assure an effective procurement process.

External Resources

If your agency is small and has limited procurement experience, you may need outside help. This could include legal or other technical assistance in writing specifications, and/or assuring bidder compliance with state, federal or local regulations. Potential resources include technical personnel within your community or neighboring communities, and state and federal officials. An initial primary resource should be the staff at WisDOT's Public Transit Section. WisDOT also recommends that the bid /RFP packet be reviewed by your transit committee to make sure the type of goods or services you are procuring meets the needs of your community.

One way to reduce the need for outside assistance is to include language in the procurement package which require contractors to assume responsibility for compliance with certain process elements

included in the bid or RFP. Keep in mind that you, as the subrecipient of federal funds and the administrator of the procurement contract, have the ultimate responsibility for compliance with all requirements of the procurement process.

2.1.3 Plan the Procurement Process

Once you have identified the individuals who need to be involved, a meeting should be held to plan the steps in the procurement process. Your meeting should address the following items:

- Review agency resources in terms of managing the procurement process, and determine if others need to be involved.
- Assign specific responsibilities to each participant
- Create advertising policies for solicitation or publication of notices
- Review local, state and federal government requirements
- Clearly identify bidder/proposer responsibilities
- Establish a communication and reporting process for your working group

Your internal committee should meet as needed during the procurement process.

2.1.4 Decide on the Method of Procurement: IFB or RFP

Up to this point we have been referring to bids or proposals and Bids or RFP's. The differences are explained below. With your procurement of goods or services, an important initial consideration must be the type of procurement method you will use. The two basic methods are the Invitation for Bid (IFB) and the Request for Proposal (RFP).

Invitation for Bid (IFB)

This is the most common method used in the public sector to obtain specific goods , such as vehicles and equipment. This method is typically used when complete specifications or purchase descriptions are available or could be easily developed. The IFB process must involve two or more bidders, and the award is given to the lowest responsive and responsible bidder. The specifications for goods and/or services to be procured under an IFB are not subject to negotiation. Bids which deviate from the specifications are deemed unresponsive and thus rejected. Typically, the IFB includes two parts, technical and financial. Bidder responses to each part are evaluated separately. Bids which deviate from the specifications would not be rejected if the deviations have been accepted through an "approved equals process." Additional information regarding approved equals can be found in Section 2.3.4 and Appendix E - WisDOT Suggested Forms.

Request for Proposal (RFP)

The RFP is a competitive procurement method used when a general, rather than specific, description of goods and/or services is used. This method allows for the procurement of goods and/or services without detailed design specifications. The primary consideration in awarding a contract ***need not be price***. Equitable communication with proposers may be used (such as interviews, presentations, and negotiations) to reach an optimal contractual agreement, in which both price and quality are used in the contractor selection. In this way the technical expertise and the experience of the proposer can be evaluated. When using an RFP method, bidders typically submit a Statement of Work and separate Cost Proposal.

Alternatively, a Request for Qualifications (RFQ) process can be used. The RFQ process provides information on the background and experience of the proposer. This process is then followed by an RFP process, if more than one qualified bidder is available. Frequently, the RFQ and RFP process is combined into a single “RFP” document. Further details about the RFQ/RFP processes are presented later in this section.

Contractors have flexibility under the RFP process in how the goods and/or services are produced, and the award is based on an evaluation of price and quality. The RFP method is used typically for planning and engineering studies, or for contracting with architectural and engineering firms. Broader scope procurements where every detail of the work to be done cannot be specified, and/or when creativity on the part of the proposer is desired, are generally conducted utilizing an RFP method of procurement.

2.2 PROCUREMENT PACKET PREPARATION

2.2.1 Convene a Review Committee

Depending on the complexity and type of procurement process you will be undertaking, a review committee may be convened to provide guidance and direction in the development of the procurement packet. At a later stage in the procurement process, this committee may be utilized to evaluate bids or proposals. The composition of the committee would logically include some or all of the individuals and functional areas represented in your internal working committee. The committee should review bids or proposals, arrange for negotiations with the bidders/proposers, if necessary, and be responsible for the selection of the final contractor.

2.2.2 Develop Draft IFB or RFP (including all required clauses)

After you have made a decision regarding the content of the procurement and the method to be used, you must draft the IFB or RFP document. Model IFB's and RFP's can be found in the APTA Standard Bus Procurement Guidelines. You may also contact WisDOT for sample IFBs or RFPs used by other subrecipients.

Your procurement package must include standard terms and conditions (such as termination and bidder/proposer performance requirements and insurance requirements for bidders/proposers including workers' compensation, general liability and auto insurance. These and other FTA required clauses for all contracts are presented in Appendix B. If you are purchasing vehicles, refer to Appendix C which contains those clauses applicable to vehicle purchases.

Forms that are **required** in your procurement package can be found in Appendix D. The forms serve two basic functions: 1) to communicate information between the procuring agency and the prospective bidders/proposers, and 2) to certifying compliance by the procuring agency and contractors with federal requirements. WisDOT/FTA required forms are shown below in **bold**. Please note that many of the required forms have a threshold dollar amount of \$100,000 or more and therefore would not be applicable to many Section 5311 procurements. Since the majority of Section 5307 and 5309 procurements exceed the \$100,000 threshold, those procurement packets must include all appropriate forms. *Suggested* forms are included in Appendix E. The required and suggested forms are:

1. Overall Federal Regulation Compliance

2. **Certification of Compliance with Bus Testing Requirements**
3. **Compliance with Specifications**
4. **Buy America Certification**
5. **Debarment and Suspension Certification**
6. **Lobbying Certification**
7. **DBE Certification (\$250,000 Threshold)**
8. **Pre-Award/ Post-Delivery Buy America Certification**
9. **Pre-Award/ Post-Delivery Purchaser's Requirements Certification**
10. **Pre-Award/ Post-Delivery FVMSS Compliance or Exemption Certification**
11. **Post-Delivery Purchaser's Requirements Certification for More Than Ten Buses or Modified Vans**
12. Procuring Agency and Contracting Officer
13. Request for Change or Approved Equal
14. Acknowledgment of Addenda
15. Offeror Service and Parts Support Data
16. Form for Proposal Deviation
17. Pricing Schedule
18. Offer and Award

In addition to the required forms, your procurement package should contain additional elements such as: procurement process, selection criteria, protest/appeal procedures, specifications, etc. ***These items are recommended additions to your solicitation document.*** Remember, upon award of your solicitation, this may become part of a binding contract. The recommended items could provide you with appropriate remedies that may be needed in the future.

Uniform Terms and Conditions as contained in Appendix B (or for vehicle purchases, Appendix C) must be included in your IFB or RFP. You may wish to contact your procurement and or legal departments for assistance with other contract clauses.

Additionally, it is recommended that you require the submission of ***appropriate levels of insurance*** from your contractor. Commonly recommended levels include: \$1,000,000.00 General Liability (per occurrence), and Commercial Automobile Liability in a combined single limit of not less than \$1,000,000 for all owned, leased, hired and non-owned vehicles. For determining your specific levels, please contact your risk manager or insurance representative.

2.2.3 Develop Technical Specifications and/or Scope of Work

The scope of work or specifications present a detailed description of the goods or services to be purchased. Under federal grant programs, the specifications or scope of work must address pertinent federal requirements such as the Americans with Disabilities Act (ADA), Federal Motor Vehicle Safety Regulations (FMVSS), Buy America, Bus Testing and other requirements.

Subrecipient specifications for goods or services shall be non-proprietary in nature. This means that the use of "brand names" shall be limited to the extent possible. Whenever a specific trade or product name is used within the specification, the following statement shall be added: ". . .or approved equal with essentially comparable standards of quality, design, and performance." The specifications shall comply with the requirements of FTA Circular 4220. (see Appendix A).

2.2.4 Identify Potential Bidders/Proposers

Following, or concurrent with, the development of your the procurement documents (IFB or RFP), you should develop a list of prospective proposers or vendors. WisDOT is a good source for information on potential bidders/proposers. National trade publications such as *Passenger Transport*, *Urban Transportation Monitor*, etc. can be used as additional sources of prospective contractors.

2.2.5 Develop Evaluation Process and Criteria

Invitation for Bid - IFB Method

The bid award in an IFB procurement is made to the bidder who complies with the requirements and instructions of the IFB, and who offers **the lowest total bid price** while meeting all specifications and requirements. The bidder must also provide evidence of the capability to honor the terms of the contract and deliver the goods and services on time. In other words, the contract is awarded to the most responsive and responsible bidder at the lowest cost. Penalties and incentives can be included in the evaluation process.

Request for Proposals - RFP Method

Selection of a proposer under this method is based on the qualifications of the proposer, the proposer's compliance with proposal requirements and instructions, and the proposed price. Potential contractors must provide evidence of financial strength, experience with similar projects and the capability to honor the terms of the procurement document. Penalties and incentives can be included in the evaluation process.

Examples of evaluation criteria and scoring procedures for the RFP procurement method are included in section four of this manual and in APTA's Standard Bus Procurement Guidelines.

2.2.6 Develop Protest Procedures

Pre-Award Protest Procedures

Depending on the complexity of the procurement process you are undertaking, there may be issues that bidders/proposers may want to challenge during the pre-bid/pre-proposal conference or the "approved equals process".

Post-Award Protest Procedures

As the procuring agency, you must make every effort to provide for open competition and award a contract in a fair and equitable manner following bid review, evaluation and award procedures. In the event that a bidder feels that a contract award has been made unfairly or improperly, the procuring agency must have in place a policy and process to handle protests. Your protest procedures ***must*** be included in your procurement package. The policy should include internal protest procedures and time frames and also address confidentiality and award withholding. The contractor has the right to protest the award and must follow the administrative procedures you establish as the procuring agency. If the bidder/proposer disagrees with your decision, he/she can appeal. The bidder/proposer must file a protest that is in compliance with FTA Circular 4220 and with local and state regulations. WisDOT will only review protests relating to the failure of a procuring agency to follow their own stated procurement procedures.

2.2.7 Finalize Draft of Bid Package

Your internal working committee should review your draft IFB or RFP. More than one committee meeting may be required for this task. The meeting(s) should address the following items:

- Review specifications and scope of procurement
- Review of IFB or RFP document for compliance with local, state and federal government requirements
- Review of IFB or RFP document to determine if it clearly identifies bidder/proposer responsibilities
- Evaluation criteria and the protest procedures
- Bidder/proposer list of potential bidders or proposers
- Advertising policies for solicitation or publication of notices

At a minimum each subrecipient procurement packet shall include the following information:

For Invitation for Bids (IFB) or Request for Proposals (RFP)

- Solicitation/Notice/Invitation for Bids
- Non-proprietary specifications for the good or service to be purchased or acquired
- Bid or Request for Proposals requirements and conditions
- Federally required certifications and regulatory language (see Appendix B, C, D, and E)
- Selection criteria
- Pre-Bid/Pre-Proposal Protest Procedures (Approved Equals - if applicable)
- Intent to Award Protest Procedures (after intent to award is published)
- Bid specification sheet (bidder/proposer checks off compliance with the specs)
- Bid/Proposal offer sheet (bidder/proposer writes in price and signs)

For Request for Quotations (also referred to as an RFQ)

- Quote sheet (bidder/proposer writes in price and signs)
- Non-proprietary specifications for the good or service sought
- Federally required certifications and regulatory language

2.2.8 WisDOT Review and Approval of Procurement Packet

When the draft procurement packet has been completed, it must be submitted to WisDOT for review and approval prior to advertisement and distribution. The **pre-bid checklist** must accompany the package (see Appendix F). WisDOT will review your procurement package for compliance with FTA requirements, proprietary language and specifications, local preferences, evaluation process and criteria, protest procedures, and general completeness. Following WisDOT review, you will be advised of necessary changes or approved to proceed with the solicitation.

When submitting the *procurement packet*, please use the following address:

Wisconsin Department of Transportation
Bureau of Transit and Local Roads
Public Transit Section
PO Box 7913
Madison WI 53707-7913

2.3 CONDUCTING THE PROCUREMENT

2.3.1 Finalize IFB/RFP Package

While reviewing the subrecipient procurement package, WisDOT staff may request changes or additions to make your procurement packet compliant with federal or state requirements. After your IFB/RFP has received WisDOT approval, finalize the document by incorporating any required changes. In the event that the procurement packet has been sent to prospective bidders/proposers, an addendum shall be sent to all bidders/proposers who received a copy of the procurement packet. WisDOT should also receive a copy of the finalized version of your procurement document copies of any addenda.

2.3.2 Advertising and Notifying Potential Bidders/Proposers

Following WisDOT approval of your procurement documents, you will notify potential bidders/proposers on your list of qualified contractors. The solicitation or notice must contain a "Solicitation" form which provides prospective bidders/proposers with important information regarding the procurement, including the scope of the procurement, the date of a pre-bid/pre-proposal conference (if applicable), deadlines for bidders/proposers communications (including requests for approved equals), and the bid or proposal due date.

You should send bidders/proposers a copy of the solicitation. Alternatively, you may send a complete procurement package which includes the solicitation to those bidders/proposers that you reasonably expect to respond. Local newspapers and national trade publications such as *Passenger Transport* or *Urban Transportation Monitor* may be used to advertise for prospective bidders/proposers. An Affidavit of Publication will be needed for WisDOT approval of your bidder/proposer selection at the pre-award step (as referenced in Section 2.4.4).

Note: *Wisconsin state purchasing guidelines require that **two (2) notices** be published in the local official paper (county or regional circulation) for procurements exceeding \$25,000. The first notice must be published **at least 14 days** prior to the due date of bids/proposals. The second notice must be published **at least 7 days** prior to the due date. Your local requirements may vary, or you may want to allow more time for response to your solicitation, however, **the state minimums must be met or exceeded**. If a bidder/proposer is interested in your procurement, he/she would request a complete procurement packet.*

2.3.3 Conduct a Pre-Bid or Pre-Proposal Conference (Optional)

A pre-bid or pre-proposal conference allows bidders/proposers the chance to ask questions regarding your desired purchase. The date for the Pre-bid Conference must be stated in your "Solicitation Schedule" in the bid package. It is best to hold the conference soon after the invitations to bid have been sent so that unclear areas may be addressed early on. The Pre-bid Conference is more effective if prospective bidders/proposers submit written questions for your review in advance. Attendance by prospective bidders/proposers at the conference is usually optional but may be required depending on the particulars of your proposed procurement.

2.3.4 Procedures for “Approved Equals” (If Applicable)

Depending on the type and complexity of the subrecipient procurement, there may be a need to have a written procedure for handling “approved equals” requests from bidders/proposers, and for handling “approved equals” appeals from bidders/proposers. These procedures should be included in the subrecipient procurement document. The approved equals process should specify that each bidder/proposer must obtain written approval from the procurement agency for any proposed substitution/change/alteration/modification to the specification during the “approved equals” period specified in the procurement document. Other bidders/proposers shall receive concurrent notice of the “approved equals” so as to maintain a competitive environment during the procurement process.

2.3.5 Pre-Bid/Pre-Proposal Approved Equals Protests Procedures (If Applicable)

If an approved equals process is used, the subrecipient should develop protest procedures to handle bidder/proposer protests or appeals. These procedures should be included in the subrecipient procurement document so the bidder/proposer can refer to them should the need arise. The procedures should be substantive enough to enable the subrecipient to resolve the matter at the local level with minimal intervention by WisDOT or FTA.

2.3.6 Bid/Proposal Deadline and Acceptance by the Procuring Agency

Late bids or proposals shall not be accepted by the procurement agency. The subrecipient as the procuring agency must strictly adhere to its established deadline for receipt of bids or proposals. Acceptance of bids or proposals after the established deadline constitutes a violation of the subrecipients’ own procurement process. Furthermore, this creates an unfair advantage over other bidders/proposers who had submitted their bids/proposals on time. If the subrecipient finds it necessary to change the deadline for submittal of bids/proposals, it must inform all bidders/proposers who have received a copy of the procurement packet by issuing an addendum to the IFB or RFP. Reliance upon a carrier for delivery of bids/proposals is at the bidder/proposer’s own risk. WisDOT does not encourage the acceptance of bids/proposals which have been submitted via facsimile. Subrecipients who accept this submittal are encouraged to require the bidder/proposer to submit the signed “hard copy” of their bid/proposal.

Bids will be publicly open and read aloud at the designated date and time. Further evaluation will determine a bidder’s responsiveness to the requirements stated. The lowest cost responsive and responsible bidder is awarded the contract in an IFB process.

If the procuring agency is conducting an RFP process, the proposals received by the established deadline will be submitted to the review committee for evaluation. The contract will be awarded based upon quality and price.

2.4 PRE-AWARD REVIEW AND CONCURRENCE PROCESS

2.4.1 Re-Convene Review Committee

The review committee should be re-convened to evaluate the bids or proposals, the qualifications of the bidders/proposers, and to determine the competitiveness of the bids or proposals. In cases where a committee was not utilized earlier, the review committee should be convened to evaluate the bids or

proposals. This committee would logically include some or all of the individuals and functional areas represented in your internal working committee. The committee should review bids or proposals, arrange for negotiations with the bidders/proposers, if necessary, and be responsible for the selection of the final contractor.

2.4.2 Review Evaluation Process and Criteria

The review committee should review the established evaluation process and criteria before evaluating the bidders/proposers submittals. This helps ensure that committee members are using an objective and systematic approach in evaluating the responsiveness of the bids or proposals.

2.4.3 Evaluate Bids/Proposals for Required Elements/Responsiveness

Bids or proposals must be reviewed to determine whether they contain all required elements. The bidder/proposer must submit the original bid or proposal and required number of copies by the due date as stated on the "Solicitation Data" form.

IFB Method

The bid should be in a sealed envelope and must arrive by the due date. It should be submitted in original form plus the specified number of copies. The bids are opened publicly at the set time specified in the proposal. The contractor must include a "Solicitation, Offer and Award" form, and submit a completed pricing schedule with price/cost information.

Award of the contract is made to the bidder/proposer with the lowest total cost bid, including delivery charges, that is responsive to all procurement requirements. As stated in APTA's Standard Bus Procurement Guidelines the bid must include as appropriate:

1. Offeror's financial statements prepared in accordance with United States Generally Accepted Accounting Principles (GAAP) and audited by an independent certified public accountant authorized to practice in the jurisdiction of either the procuring agency or the offeror.
2. Engineering, management and service organizations with sufficient personnel and requisite disciplines, licenses, skills, experience, and equipment to complete the contract as required and satisfy any engineering or service problems that may arise during the warranty period.
3. Adequate manufacturing facilities sufficient to produce and factory-test equipment on schedule.
4. A spare parts procurement and distribution system sufficient to support equipment maintenance without delays and a service organization with skills, experience, and equipment sufficient to perform all warranty and on-site work.
5. Evidence that offeror (bidder/proposer) is qualified in accordance with Quality Assurance Provisions.
6. Evidence of satisfactory performance and integrity on contracts in making deliveries on time, meeting specifications and warranty provisions, parts availability, and steps offeror took to resolve any judgments, liens, fleet defects history, and warranty claims. Evidence shall be based on client reference.

RFP Method

The review and evaluation process for the RFP procurement method includes a broader range of items since **price is not the only criteria for selection**. The procuring agency reviews the RFP to ensure that the contractor has submitted both a technical proposal and a price proposal (in separate envelopes). Evaluation criteria should be developed in each of the following categories:

1. **Experience Necessary to Perform Scope of Work** - The extent to which the firm has personnel with the necessary experience and training to perform the work.
2. **Professional Competence in Performing Similar Work** - The extent to which the firm has demonstrated competence in performing similar work and/or the extent of former client satisfaction.
3. **Capacity to Perform the Scope of Work** - The extent to which the firm has personnel, equipment and facilities to perform the scope of work.
4. **Proposal's Demonstration of Scope and Understanding of the Project** - The extent to which the firm's proposal demonstrates a thorough understanding of the scope of the undertaking and its contribution to the transit system.
5. **Price** - The competitiveness of price.

Proposals are typically not opened in public, and are often kept confidential until the award has been made. The proposals should be evaluated by the Review Committee only. ***The price proposal should be kept in a sealed envelope for evaluation after the technical qualifications have been evaluated.*** The Review Committee must document their evaluation scores.

The following are the requirements for qualifying responsible bidder/proposers. All of these requirements must be met therefore, they are not listed by any particular order of importance. The offeror of any proposal that the Review Committee finds not to meet these requirements, and cannot be made to meet these requirements, may be deemed unresponsive and its proposal rejected. The requirements are as follows adapted from APTA's Standard Bus Procurement Guidelines:

1. Sufficient financial strength, resources, and capability to finance the work to be performed and complete the contract in a satisfactory manner as measured by:
 - Offeror's financial statements prepared in accordance with United States Generally Accepted Accounting Principles (GAAP) and audited by an independent certified public accountant authorized to practice in the jurisdiction of either the procuring agency or the offeror.
 - Ability to secure required bond(s) as evidenced by a letter of commitment from an underwriter confirming that the offeror can be bonded for the required amount.
 - Willingness of any parent company to provide the required financial guarantee evidenced by a letter of commitment signed by an officer of the parent company having the authority to execute the parent company guarantee.
 - Ability to obtain required insurance with coverage values that meet minimum requirements evidenced by a letter from an underwriter confirming that the offeror can be insured for the required amount.

2. Evidence that the human and physical resources are sufficient to perform the contract as specified and assure delivery of all equipment and other deliverables within the time specified in the contract, to include:
 - Engineering, management and service organizations with sufficient personnel and requisite disciplines, licenses, skills, experience, and equipment to complete the contract as required and satisfy any problems that may arise during the contract period.
3. Evidence that offeror is qualified in accordance with Quality Assurance Provisions.
4. Evidence of satisfactory performance and integrity on similar contracts in completing project deliverables on time, meeting scope of work, and steps offeror took to resolve any problems that may have arisen during the contract period. Evidence shall be by client references.

2.4.4 WisDOT Notified of Intent to Award

WisDOT conducts a pre-award review of bids or proposals prior to award. Once the subrecipient has selected a potential contractor, WisDOT will review the selection process and approve the bidder/proposer.

The subrecipient shall complete the **Subrecipient Pre-Award Review Checklist** contained in Appendix F. If the subrecipient is conducting a vehicle(s) procurement of \$100,000 or more, a copy of the completed **pre-award audit forms** and required subrecipient certifications must be sent to WisDOT (see Appendix D).

When submitting pre-award documents to WisDOT, please use the address listed in Section 2.2.8.

WisDOT will review your pre-award documents for compliance with state and federal requirements and the processes contained in this manual. The subrecipient will be advised of WisDOT's concurrence with the bidder/proposer selection and approval to proceed with a contract award by issuance of a **Letter of Concurrence**. If WisDOT does not concur with the subrecipient bidder/proposer selection, the subrecipient will be advised of necessary steps or alternatives to be followed. If WisDOT does not concur with the selection, a letter will be sent to the subrecipient explaining options to follow.

Copies of the following documents should accompany the letter and checklist sent to WisDOT requesting concurrence with the selected bidder/proposer (see Appendix D for required forms and Appendix F for checklist):

- Bid/Request for Proposals/Quotations
- Tabulation of Bid/Request for Proposals/Quotations (if applicable)
- Affidavit of Publication (please refer to Section 2.3.2. - Advertising and Notifying Potential Bidders/Proposers)
- List of Bidder/Proposers who received a copy of the solicitation
- List of Bidders/Proposers who received a copy of the procurement packet
- All required signed certifications from bidders/proposers submitting a Bid/RFP or Quotation (see checklist for listing of the required forms).
- Applicable documentation such as: Altoona test results, bid bond, performance bond, etc.
- Review Committee Evaluation Forms

Additional bidder/proposer information may be required by WisDOT in order to complete the review and concurrence of the subrecipient procurement. ***In the case of construction contracts or contracts involving change orders of more than five percent (5%) of the total approved contract amount, the subrecipient shall seek WisDOT concurrence prior to incurring the additional expense.***

2.4.5 Notify Selected and Rejected Bidders/Proposers

Following receipt of WisDOT's ***Letter of Concurrence*** with your bidder/proposer selection, a representative from your agency must sign the "Solicitation, Offer and Award" form and deliver it to the successful bidder. Depending on the procurement document and your local purchasing procedures, this may be the only document that needs to be signed by the subrecipient. In this case, the procurement document becomes a binding contract between the subrecipient and the Contractor.

The subrecipient is required to notify unsuccessful bidders, in writing, of the award decision.

2.4.6 Handle Intent to Award Protests Using the Local Process

A bidder has the right to protest your decision if he/she feels the award was made improperly or unfairly. The procuring agency must follow its internal protest policies and procedures referred to in Section 2.2.6 and inform the protesting bidder/proposer of the agency's decision in a timely manner. The bidder/proposer may appeal your decision and file a protest in compliance with FTA Circular 4220 and local and state regulations. WisDOT will only review protests relating to the failure of a procuring agency to follow its own stated procurement procedures.

2.5 POST-AWARD AND POST-DELIVERY ACTIVITIES

2.5.1 Issue Purchase Order or Service Contract to Selected Bidder/Proposer

After the subrecipient receives WisDOT's ***Letter of Concurrence***, a purchase order shall be issued or a service contract drafted to ensure the contractor complies with the Bid or Proposal requirements. The subrecipient is responsible for the financial commitment incurred by issuing a purchase order or contract. The subrecipient receives the federal share of the cost of goods or services following delivery or project completion.

2.5.2 Monitor Contractor Activities (If Applicable)

If the contract is for services, vehicles or facility construction, the subrecipient is responsible for monitoring contractor compliance with the contract, purchase order, and/or technical specifications or technical proposal. The subrecipient is also responsible for ensuring that contractors and subcontractors comply with federal and state regulations.

2.5.3 Post-Delivery Inspection of Capital Equipment Purchases

When vehicles or other equipment have been delivered, several activities must take place. Warranty arrangements must be made with the contractor and post-delivery audit forms must be completed and sent to WisDOT (See Appendix D).

Additionally, after subrecipients of Section 5311 funds have placed vehicles or other equipment in service, they must comply with applicable reporting requirements including:

- performance reports;
- vehicle inspections;
- biennial vehicle and equipment inspection/self certifications processes.

Section 5307 & Section 5309 subrecipients are responsible for maintaining facilities, records on vehicles, and equipment. These records shall contain a history of the facility, vehicle or equipment starting with construction or delivery and extending through disposal.

2.5.4 Complete Post-Delivery Audit Forms

After delivery of vehicles or equipment, it is the subrecipient's responsibility to conduct an inspection and ensure compliance with the specifications and with federal and state regulations. The post-delivery audit forms must accompany any subrecipient request to WisDOT for federal reimbursement (See Appendix D).

2.5.5 Acceptance, Warranty and Service Arrangements Made with Contractor

It is recommended that any problems discovered during the post-delivery inspection of vehicles or equipment be resolved with the contractor *before* issuing payment. Typically payment constitutes final acceptance of a vehicle, and it may be difficult to obtain service or repairs at no cost after issuing payment. The subrecipient is responsible for all warranty and service arrangements with the contractor.

2.5.6 Showing WisDOT as Lien-Holder

Section 5311 subrecipients must submit a copy of their DMV Application for Title/Registration, showing WisDOT as a lien holder of the vehicle's title (**Secured Party Number 039337**). This must be sent to WisDOT with their request for reimbursement of the federal share of vehicle cost.

Note: Vehicle titling and registration costs are not an eligible cost under the capital grant program. These costs must be covered with subrecipient funds.

The DMV Title/Registration requirements applicable to Section 5311 and Section 5310 subrecipients are not applicable to Section 5307 or Section 5309 subrecipients. The subrecipients of Section 5307 and 5309 funds follow their own procedures to register vehicles.

2.5.7 Payment/Reimbursement of the Federal Portion of the Purchase Cost

Only acquisition of goods and services approved by WisDOT *before* a contract or purchase order is issued are eligible for reimbursement. Subrecipients requesting reimbursement of the federal dollars under their grant contract must submit a letter indicating:

- Grant Number and Project I. D.
- Project Description
- Indicate whether it is a partial payment or final payment request
- Total amount and federal reimbursement sought

All reimbursement requests must be accompanied by:

- Copy of the Contractor invoice(s)

- Copy of the purchase order - or sales contract (if a vehicle)
- Copy of change order(s) (if a facility construction project)
- Copy of payment check(s)
- Subrecipient checklist (see Appendix F)
- Subrecipient signed certifications (see Appendix D)
- WisDOT post-delivery audit forms
- Copy of DMV application for Title Registration
- other supporting documentation as applicable

WisDOT may request additional information in order to process the subrecipient reimbursement request.

In the case of rolling stock purchases, WisDOT should not be invoiced until all vehicles have been delivered and accepted by the transit agency. Final acceptance means that all issues affecting vehicle performance have been resolved. Any additional contractor expenses (e.g., labor, materials, etc.) after final acceptance ***will not be paid by*** WisDOT. These expenses should be covered under the vehicle warranty/guarantee.

3. **DETAILED FEDERAL REQUIREMENTS**

The receipt of federal funds requires compliance with FTA regulations by the recipient of funds and by subrecipients and contractors. Through your contract with WisDOT you will be made aware of specific procurement requirements for your particular grant. Different rules apply depending upon whether you, as the subrecipient, are a local government or Indian Tribal entity or whether you are a non-profit organization. Different requirements also apply to vehicle purchases. The following subsections are intended to provide some level of detail about specific regulations.

3.1 **BUY AMERICA STANDARD REQUIREMENTS**

For purchases exceeding \$100,000, grantees and subgrantees must use steel, iron and manufactured products made in the United States to be eligible for federal funding. If the product is not made in the United States, the subrecipient shall ensure the product is subject to a “general waiver” or obtain a waiver from FTA before payment can be made. The subrecipient must provide WisDOT with certifications ensuring compliance with Buy America requirements (see Appendix D for samples of the certification forms).

For purchases of rolling stock, the Buy America requirements entail a pre-award and post-delivery review process. Subrecipients must maintain documentation on file showing compliance with these requirements as follows:

1. A pre-award certification must be obtained by the subrecipient from the manufacturer before contracting for the purchase of rolling stock (see Appendix D for a sample of the certification form). Subrecipients must obtain a pre-award break-down of *proposed* components and sub-components from vendors and the locations of the final assembly, and will review the information for compliance with Buy America and purchase specifications.
2. A post-delivery audit must be made before title to rolling stock is transferred to a subrecipient (see Appendix D for samples of the certification forms). Subrecipients must obtain a post-delivery break-down of *actual* components and sub-components from vendors and the locations of the final assembly, and will review the information for compliance with Buy America and purchase specifications.
3. Federal Motor Vehicle Safety Standards (FMVSS) also apply for vehicles subject to this requirement. The subrecipient shall obtain a copy of the manufacturer’s self-certification that the vehicles comply with the standard. For vehicles not subject to this requirement, the subrecipient shall obtain a statement from the manufacturer attesting to that fact. The statement shall be kept in the procurement file.
4. For rolling stock purchases of more than ten units, the subrecipient shall certify that an “in-plant inspector” was present to monitor the final assembly process. The inspector shall provide the subrecipient with a final report of construction activities.
5. For all rolling stock purchases, the subrecipient shall verify that the manufacturer’s proposed vehicle specifications meet the bid specifications and further verify that the vehicle has been visually inspected and road tested to demonstrate that the vehicle meets contract specifications (post-delivery).

When domestically produced goods are unavailable or when there is a price differential of at least 25 percent between domestic and foreign made products, an FTA waiver must be obtained by the subrecipient before awarding the purchase to the bidder of the foreign made product.

3.2 PROCUREMENT INTEGRITY STANDARD REQUIREMENTS

Recipients of Federal Transit Administration (FTA) funds are prohibited from contracting for goods or services from organizations or contractors who have been *debarred* or *suspended* from receiving federally-assisted contracts, and must certify that they will not enter into a contract of \$100,000 or more with any such contractor. Contractors also must certify to the procuring agency that they, or any of their sub-contractors are not suspended or debarred from participation in a federally-assisted contract. Subrecipients are required to certify through their “principals” (an officer, director, owner, partner, key employee, or other individual who has primary management or supervisory responsibilities, and an individual who has critical influence or substantial control over a covered transaction, whether or not employed by the subrecipient) that they are not excluded from federally assisted transactions.

This procurement integrity standard requirement applies to contracts exceeding \$100,000. In addition, the subrecipient must certify that none of its third party contractors and subcontractors is debarred, suspended, ineligible, or voluntarily excluded from participation on federally assisted transactions. Subrecipients must ensure the following:

1. Subrecipient procedures are in place to obtain required certifications from principals, contractors and subcontractors (see Appendix D for a sample of the certification form).
2. Proper certifications are included in subrecipient procurement documents and contracts, and that completed copies are included in the procurement or grant files (see Appendix D for a sample of the required certification form).
3. Certifications regarding debarment and suspension are required of principals of subrecipient and major third party contractor (for contracts exceeding \$100,000 with multiple subcontractors).

Subrecipients are obligated to inform FTA if at any time the subrecipient or another covered entity learns that a certification was erroneous when submitted or if circumstances have changed (new personnel, indictments, convictions, etc.)

3.3 RESTRICTIONS ON LOBBYING STANDARD REQUIREMENTS

The Lobbying requirements apply to construction, architectural and engineering, acquisition of rolling stock, professional service contracts, operational service contracts and/or turnkey contracts over \$100,000.

Subrecipients of FTA grants exceeding \$100,000 must certify compliance with the Byrd Anti-Lobbying Amendment or "New Restrictions on Lobbying" before they can receive funds (see Appendix D for a sample of the certification form). "New Restrictions on Lobbying" requires that the procuring agency, the contractor and any subcontractors certify that they will not and have not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award

covered by 31 U.S.C. 1352. The procuring agency, the contractor and any subcontractors shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on their behalf with non-federal funds with respect to that federal contract, grant or award. In other words, this is a certification by the contractor to the procuring agency that neither the contractor nor any of its subcontractors have in the past nor will in the future use federal funds to influence any employee of a federal agency or any member or employee of Congress in obtaining a federal award, grant or contract.

Subrecipients shall annually certify, through the Certifications and Assurances, that no federal funds have been used to pay lobbyists to exert influence regarding the award of federal contracts, and that such requirements ***have been imposed over contractors and subcontractors***. Contractors must sign the Lobbying Certification if their contract exceeds \$100,000. Notice of the lobbying certification requirement shall be provided in the subrecipient procurement documents.

Each calendar year, subrecipients supporting lobbying activities with non-federal funds (this is considered an ineligible expense) must disclose such activities in the Standard Form-LLL. Each time that events that affect the accuracy of information contained in previous forms occur, the subrecipient must submit an updated report (Standard Form-LLL) at the end of each calendar quarter. If a subrecipient has no process to ensure receipt of certification and disclosure statements, it must develop and/or document one.

3.4 BUS TESTING REQUIREMENTS

Subrecipients purchasing buses with FTA funds must certify that two conditions will have been met before authorizing final acceptance of the first bus of any new bus model or any bus model with a major change in configuration or components:

1. The model of the bus will be tested at a bus testing facility approved by FTA.
2. The subrecipient will receive a copy of the test report prepared on the bus model at a point in the procurement process specified by the subrecipient which will be prior to the subrecipient's final acceptance of the first vehicle. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

The bus testing requirement applied initially to three categories of vehicles:

1. Heavy-duty large buses (with a useful life of 12 years or 500,000 miles)
2. Heavy-duty medium buses (with a useful life of 10 years or 350,000 miles)
3. Medium-duty buses (with a useful life of 7 years or 200,000 miles)

FTA extended the bus testing requirements to the following categories of small vehicles in 1994:

1. Vehicles built from unmodified mass-produced chassis
2. Vehicles manufactured from modified mass produced chassis or vans

3. Vehicles manufactured from non-mass produced chassis or vans

3.5 AMERICANS WITH DISABILITIES ACT REQUIREMENTS

Subrecipients must acquire accessible vehicles under ADA requirements. Under certain circumstances non-accessible vehicles can be acquired. For public entities operating fixed-route service, all new vehicles acquired after August 25, 1990 must be accessible unless a waiver has been obtained from the FTA Administrator. The subrecipient must hold at least one public hearing prior to requesting a waiver. FTA may grant a waiver if the subrecipient demonstrates that the initial solicitation specified that the buses were to be lift equipped, lifts for the buses could not be provided by any qualified lift manufacturer, and any further delay in purchasing the buses would significantly impair the transportation services in the community.

Subrecipients opting to remanufacture vehicles to extend their useful life for five or more years or to purchase vehicles which have been remanufactured must ensure that the vehicles are accessible to the maximum extent feasible. It is considered feasible to remanufacture a vehicle so that it is accessible, unless an engineering analysis demonstrates that including accessibility features would have a significant adverse effect on the structural integrity of the vehicle.

Demand responsive systems for the general public must acquire accessible vehicles unless equivalent service is provided. When viewed in its entirety, the demand responsive system must provide a level of service to persons with disabilities that is equivalent to the level of service it provides to persons without disabilities to be exempt from the vehicle accessibility requirement. The ADA regulations provide specific guidance for evaluating equivalent service. A demand responsive system may be considered to provide equivalent service if it is provided in an integrated setting and it is equivalent with respect to:

1. response time
2. fares
3. geographic area of service
4. hours and days of service
5. restrictions or priorities based on trip purpose
6. availability of information and reservations capability
7. constraints on capacity or service availability

Prior to acquiring inaccessible vehicles, the subrecipient must certify to WisDOT that it provides an equivalent level of service. This certification is valid for no more than one year.

Subrecipients constructing new facilities or altering existing facilities must make the facility or alterations readily accessible to and useable by individuals with disabilities. An exception may be made if the cost of making the facility accessible is disproportionate to the cost of the project. The ADA regulations provide guidance to define disproportionate costs, specify what costs may be counted, and provide a priority listing of accessible features.

3.6 DRUG AND ALCOHOL TESTING REQUIREMENTS

Subrecipients are required to have an anti-drug policy and training program. Recipients of Sections 5307, 5309, or 5311 funds must have drug and alcohol programs in place to cover all “safety sensitive” employees (except maintenance contractors for Section 5311 subrecipients).

The subrecipient’s drug and alcohol testing program must cover: marijuana, cocaine, opiates, amphetamines, phencyclidine, and alcohol. Testing is required in the following situations:

- Pre-employment Testing (drug testing only)
- Reasonable Suspicion Testing
- Random Testing
- Post-Accident Testing
- Return to Duty/Follow-up Testing
- Blind Performance Testing (drug testing only)

All safety-sensitive employees are subject to the testing program including:

- Operators of revenue vehicles
- CDL holders operating non-revenue vehicles
- Mechanics maintaining revenue vehicles or equipment used in revenue service (except contract maintenance workers for Section 5311 subrecipients)
- Employees controlling the movement of revenue vehicles (such as drivers & dispatchers)
- Firearm-bearing police and security personnel
- First-line supervisors whose responsibilities include safety sensitive functions

Other requirements applicable to subrecipients are:

- A written drug and alcohol policy
- A training program on drug and alcohol abuse
- Records to document compliance
- Records and reporting on drug and alcohol testing results
- Drug and Alcohol Testing Certification to FTA

3.7 FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Subrecipients are responsible for obtaining, from the vehicle manufacturer, a self-certification that the vehicle(s) to be purchased meet the Federal Motor Vehicle Safety Standards (FMVSS). If the vehicle(s) are not subject to the FMVSS, the subrecipient must obtain a certified statement from the manufacturer that the vehicle(s) is not subject to such standards. At the pre-award stage, the subrecipient must obtain a copy of the manufacturer’s self-certification sticker information and, at the post-delivery stage, verify that the FMVSS sticker is affixed to each vehicle.

The subrecipient must supply WisDOT with copies of these certifications. It is also the responsibility of the subrecipient to maintain a file containing all the certifications signed by the manufacturer and supporting documentation. If these documents are missing, the subrecipient must take necessary action to obtain the appropriate certification(s).

3.8 DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

Disadvantage Business Enterprise (DBE) provisions apply to all U.S. DOT (including FTA) assisted contracts. These requirements flow to FTA recipients who receive at least \$250,000 in FTA capital and operating funds, exclusive of funds for transit vehicle purchases, or \$100,000 in FTA planning funds. The requirements are passed on to the subrecipients.

It is the policy of the U.S. Department of Transportation, WisDOT and subrecipients that DBE's shall have the opportunity to participate in contracts financed in whole or in part with federal funds.

The contractor agrees to ensure that DBE's have equal opportunity to participate in whole or in part of the contract. In this regard, the contractor shall take necessary and reasonable steps in accordance with the regulations to ensure that DBE's have equal opportunity to compete for and perform subcontracts. The contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age, or physical handicap in the award and performance of subcontracts. The subrecipient policy should be to promote the development and increase the participation of businesses owned and controlled by disadvantaged persons. DBE involvement in all phases of the subrecipient procurement activities are encouraged.

The subrecipient federal fiscal year DBE goal is set by the subrecipient in an attempt to match projected procurements with available qualified disadvantaged businesses. Goals for budgeted service contracts, bus parts, and other materials and supplies for DBE's have been established by WisDOT, unless the goal has been modified to consider local circumstances and conditions. These goals are considered pertinent to any subrecipient procurement process. If a specific DBE goal is assigned to a contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert reasonable good faith efforts to involve DBE's in the work provided, the subrecipient may declare the contractor non-compliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal has been assigned to the contract.

The contractor will keep records and documents to indicate compliance. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the subrecipient and will be submitted to the subrecipient upon request. The subrecipient will provide affirmative assistance as may be reasonable and necessary to assist the contractor in implementing the programs for DBE participation. The assistance may include the following:

1. Identification of Qualified DBE's
2. Available listings of Minority Assistance Agencies
3. Holding bid conferences to emphasize requirements

Please be aware that DBE rules and goals are changing at the current time. A revised section of this manual will be provided to accommodate final DBE rule implementation.

4. PROCUREMENT PROCEDURES

The procedures included in this section are intended to clarify and provide further guidance on selected types of procurements. They do not replace procurement processes discussed in other sections of this manual. Rather they provide additional information which we hope will be useful for subrecipients.

The procedures included in this section are applicable to subrecipients of Section 5307, 5309, & 5311 funding. Overall, these procedures address specific procurement efforts as identified below.

- Capital equipment purchases under \$10,000 (office, shop, communications equipment etc.)
- Capital equipment and rolling stock purchases over \$10,000 (sedans, vans and buses - lift and non-lift equipped)
- Procedures for procurement of transportation services (taxi, paratransit and bus service contracts).
- Procedures for procurement of consulting services.
- Procedures for the purchase of used capital equipment.
- Procedures for refurbishing vehicles under \$10,000

Where the procedures require submittal of information or documents for review by WisDOT's Bureau of Transit and Local Roads, please send the information to the following address:

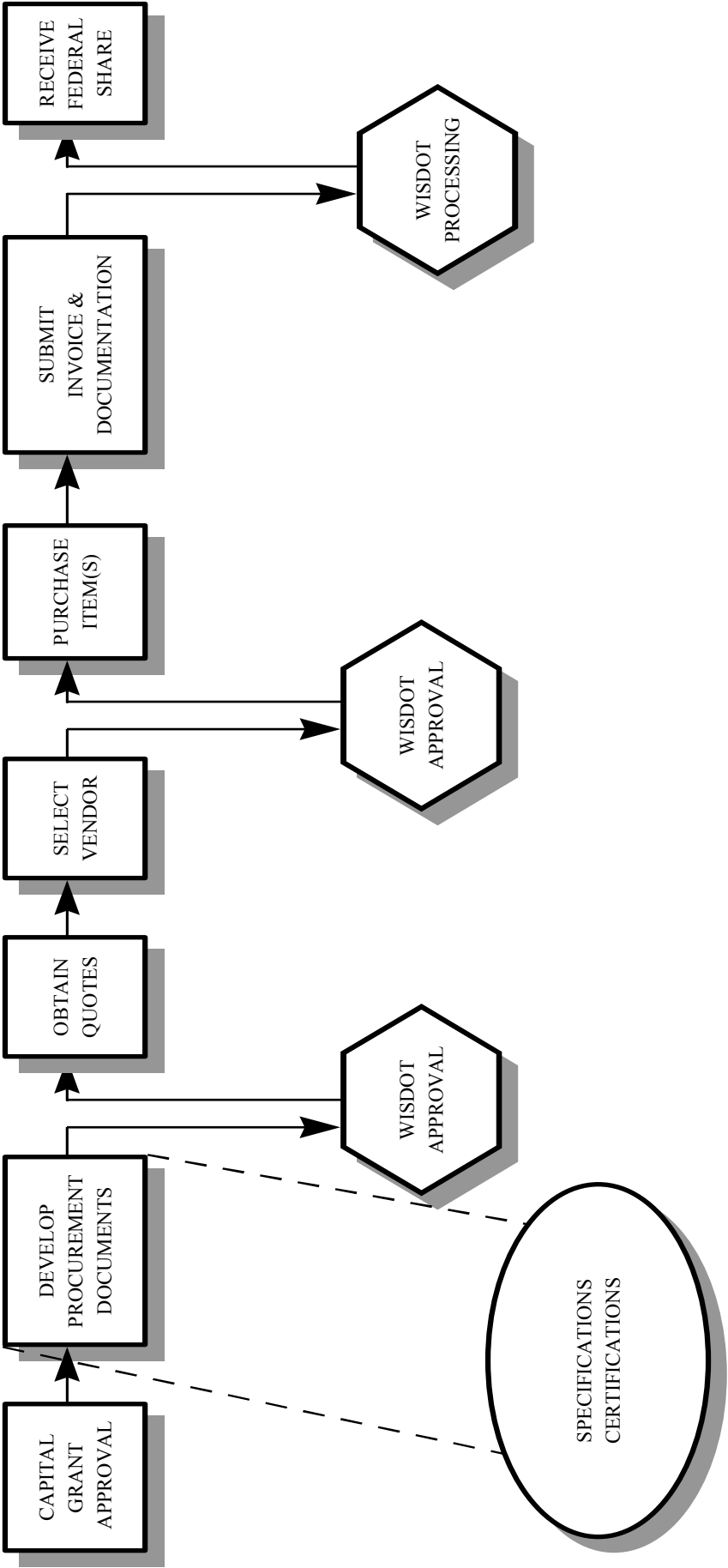
**Wisconsin Department of Transportation
Bureau of Transit and Local Roads
Public Transit Section
PO Box 7913
Madison, WI 53707-7913**

Remember that technical assistance is available from the Public Transit Section. Please refer to the list of contacts included in Appendix I.

4.1 PROCEDURE FOR PURCHASE OF CAPITAL EQUIPMENT UNDER \$25,000

1. Prepare specifications / Request for Quotations (RFQ) document. Submit to WisDOT for review.
2. Following WisDOT approval, obtain a minimum of three written quotes from bidders/proposers. You can do this by sending your Solicitation or Notice directly to bidders/proposers via mail or FAX. You may to advertise in the local paper, however, no legal notice requirement applies to this procurement procedure.
3. Bidders/proposers and/or manufacturers submit all applicable certifications and forms required by WisDOT for all purchases under \$10,000. (See Section **1.5.2 CERTIFICATIONS AND FORMS TO BE INCLUDED IN THE PROCUREMENT PACKET**).
4. Select lowest quote *that meets specifications and complies with all regulatory requirements*. Submit copies of quotes to WisDOT for review and approval.
5. WisDOT will review your selection procedure and issue a letter of concurrence. At this point, you may award a contract or approve a purchase order to the bidder/proposer. If WisDOT does not approve of your procurement, you will be advised of what additional information or steps are needed.
6. Upon receipt and inspection of equipment purchased, send an invoice to WisDOT for payment.

**CAPITAL PROCUREMENT PROCESS
PURCHASES UNDER \$10,000**



4.2 PROCEDURE FOR THE PURCHASE OF CAPITAL EQUIPMENT OR ROLLING STOCK OF \$25,000 OR MORE

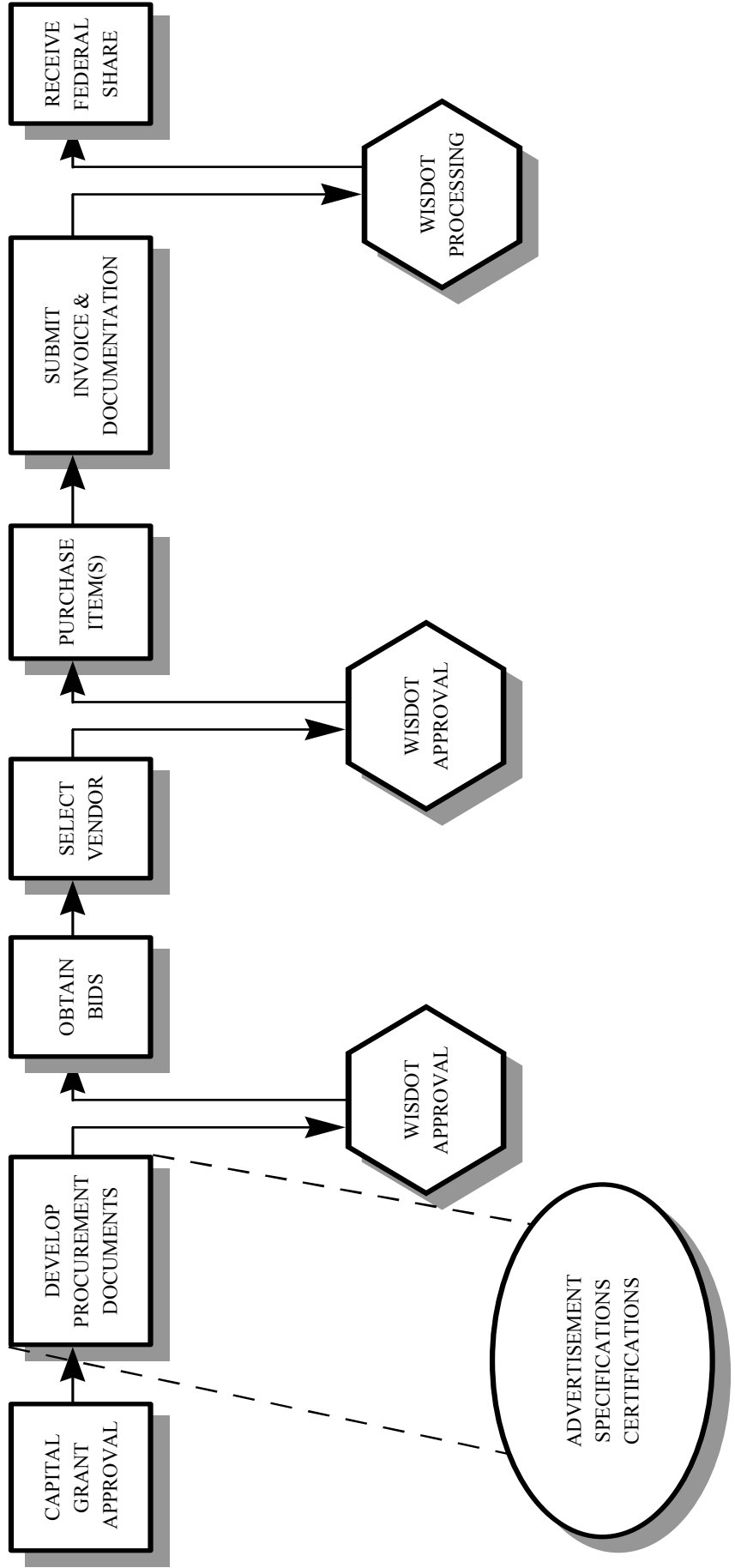
1. Select and submit to WisDOT the name, address and telephone number of the *project manager* who will be responsible for all phases of the procurement process including specifications, approved equals, etc.
2. Prepare specifications, advertisement for bids (solicitation), and procurement packet, and forward to WisDOT for review. The protest procedures that will be used at the local level must be spelled out in the procurement packet.

It is recommended that a pre-bid conference be held for large procurements (multiple vehicles, construction projects, or projects which due to their complexity lend themselves to the need for additional clarification from the procurement agency). The conference should be scheduled at the time solicitations are announced. Attendance at the pre-bid conference should be optional for bidders/proposers, however, attendance could be a requirement, depending on the complexity of the project. For projects that involve installation of equipment, it is recommended that an opportunity for an "**on-site visit**" be offered to bidders prior to the bid due date. A project timeline could be included in the procurement packet as a reference for interested parties.

3. For projects involving ITS or AVL technology, subrecipients shall comply with WisDOT ITS/AVL policy (see Appendix G).
4. Upon WisDOT approval of specifications, advertise for bids.
 - a. The notice or solicitation must be published at least 14 days prior to the bid or proposal due date.
 - b. A second notice, 7 days prior to the bid or proposal due date, must also be published.
5. The following time limits must be spelled out in bid documents:
 - a. A request for approved equals, clarification of specifications, and protests of specifications must be received by the procuring agency in writing, at least 14 days before the date of scheduled bid opening.
 - b. The procuring agency response to the above must be postmarked at least 7 days before the date of the bid opening or it will be considered void.
6. Open the bids/proposals. If there are any bidder/proposer protests, postpone/reschedule the opening of bids/proposals until protests are resolved.
7. For a listing of applicable certifications and forms that must be signed by the bidder/proposer and the subrecipient, please refer to the checklist in Section 1.5.2 and Appendix D and E.
8. If only one bid is received, the procuring agency shall complete a **single bid price analysis** and submit to WisDOT for approval (refer to FTA Circular 4220 for guidance - Appendix A).

9. Select the lowest qualified bid/proposal and submit copies of the following documents to WisDOT for review and concurrence. **Do not award the contract until receipt of approval by WisDOT.**
 - a. Copies of bids or tabulation of bids, appropriate signed certifications, and any bid documentation necessary for WisDOT review and concurrence.
 - b. A list of manufacturers, or bidders/proposers, who requested or received a copy of the solicitation or Invitation for Bids, or the procurement packet.
 - c. An affidavit of Publication with advertisement for bids attached.
10. If the subrecipient wants to select other than the lowest bidder, submit justification to WisDOT for approval.
11. Award contract to WisDOT-approved bidder.
12. Upon receipt of equipment or rolling stock, inspect purchase for compliance with specifications. If it meets specifications send invoice to WisDOT for payment.
13. **For Section 5311 subrecipients**, the title to rolling stock vehicles shall be in the name of the public body. The title holder must ensure that the WisDOT is listed as a secured party (# 039337) when application for title/registration is filed with the Division of Motor Vehicles. We ask that you inform the contractor of this requirement before the vehicle is titled. This requirement should be included in your procurement packet. **Processing of reimbursement requests will be delayed if WisDOT, Bureau of Transit and Local Roads, is not listed as the lienholder in the vehicle(s) title(s).**

**CAPITAL PROCUREMENT PROCESS
PURCHASES OVER \$10,000**



4.3 PROCEDURE FOR THE PROCUREMENT OF TRANSPORTATION SERVICES OR CONSULTANT SERVICES

1. Select and submit to WisDOT the name, address and telephone number of the **project manager** who will be responsible for all phases of the procurement process.
2. Prepare the Request for Proposals (RFP) including specifications and detailed information about the service being sought. Also prepare the advertisement materials. These documents shall be forwarded to WisDOT for review and concurrence. The RFP documents should include the evaluation criteria on which the bidder/proposer/ qualifications will be rated. The protest procedures that will be used at the local level must also be spelled out in the procurement packet. **Note** that a separate Request For Qualifications (RFQ) may be the initial step in procuring selected transportation services. In such instances the subrecipient must also prepare and submit the RFQ document to WisDOT for review and approval.
3. Due to the complex nature of some procurements (e.g. Architectural/Engineering (A/E) services, special transportation services, etc.) it is recommended that the procurement agency hold a bidder/proposer conference. In addition, we recommend that the conference be scheduled at the time solicitations are announced. Attendance at the bidder/proposer conference should be optional for bidder/proposers, however, attendance may be a requirement depending on the complexity of the project. A project timeline should be included as a reference for bidders/proposers.
4. Following WisDOT approval of the RFQ/RFP document, it can be released and its availability published.
 - a. A notice or solicitation must be published at least 14 days prior to the proposal due date.
 - b. A second notice must be published at least 7 days prior to the proposal due date.
5. The following time limits must be spelled out in the RFQ/RFP documents.
 - a. Any request for approved equals, clarification of specifications, and protests of specifications must be received by the procuring agency in writing at least 14 days before the date of scheduled bid opening.
 - b. The procuring agency's reply to the above must be postmarked at least 7 days before bid opening or it will be considered void.
6. Open the proposals. If there are any bidder/proposer protests, postpone/reschedule the opening of bids/proposals until protests are resolved.
7. For a listing of applicable certifications and forms that must be signed by the bidder/proposer and the subrecipient, please refer to the checklist in Section 1.5.2 and to Appendix D and E
8. If only one response has been received by the RPQ/RFP submittal deadline , the procurement agency needs to determine the following:
 - a. Is the bidder/proposer qualified?

- b. If the bidder/proposer is qualified, based on the pre-established criteria, the procuring agency shall enter into negotiations with the bidder/proposer leading to a contract or service agreement.
 - c. The subrecipient shall obtain WisDOT approval prior to entering into a contract or an agreement with the proposer.
 - d. If the bidder/proposer is not qualified, then the procurement agency shall re-advertise the RFQ and seek adequate competition.
9. If more than one response to the RFQ/RFP is received, the procurement agency needs to determine the following:
 - a. Are the bidders/proposers qualified?
 1. If it is determined, based on pre-established criteria that one or more of the bidders/proposers is qualified, then the procuring agency shall evaluate the proposals. Interviews of proposers may be utilized to further evaluate a proposer's fitness and ability to complete the assigned project. Note: If more than one bidder/proposer is qualified in an RFQ process, the procuring agency shall issue an RFP to those qualified bidders/proposers. One bidder/proposer shall be selected based on the information provided in the RFP combined with the scores given to the responses to the RFQ.
 2. The procuring agency shall obtain WisDOT approval prior to entering into a contract or an agreement with the selected proposer. **Do not award the contract until receipt of approval by WisDOT.**
 - b. If the procuring agency is unable to select a bidder/proposer, then the RFQ/RFP shall be reissued
10. The evaluation criteria and the evaluation process must be established at the start of the RFQ/RFP process and must be spelled out in the procurement documents. The procurement agency is expected to follow its own procedures to select a qualified bidder/proposer.

A selection committee will be convened to screen the proposals and make a recommendation for selection. The selection committee may be comprised of representatives of the transportation commission, planning agencies, ad hoc members, transit riders, etc.

Responsive proposals received in reply to an RFQ/RFP must be evaluated using pre-established criteria. The following criteria with percentage points are offered and should be used absent other evaluation methodology/criteria pre-approved by WisDOT. It should be noted that price is a mathematical calculation, while the other criteria scores are more qualitative.

Note: In negotiated contracts of shared-ride taxi services, compliance with WisDOT's Management Fee Policy is required. (See Appendix H).

Weight

1. Experience - The extent to which the firm has personnel with the necessary experience and training to perform the work. _____%
2. Professional Competence - The extent to which the firm has demonstrated competence in performing similar work and/or the extent of former client satisfaction. _____%
3. Capacity - The extent to which the firm has personnel, equipment and facilities to perform the scope of work. _____%
4. Proposals - The extent to which the firm's proposal demonstrates a thorough understanding of the scope of the undertaking and its contribution to the transit system. _____%
5. Price - The competitiveness of price. _____%

The price is evaluated by dividing the *lowest* proposal cost by the cost of each of the other proposals. The result is multiplied by the weight assigned to the price element. The resulting score is then assigned to that particular bidder/proposer. See the following example for clarification:

Criteria	&	Weight	Firm A	Firm B
Experience		30	25	28
Professional Competence		15	12	14
Capacity		15	12	12
Proposals		10	9	10
<u>Price</u>			\$75,000	\$80,000
		<u>30</u>	<u>30</u>	<u>28.13</u>
Total		100	88	92.13

In the above example, the calculations to score the price are as follows:

Lowest Proposal ÷ Other Proposal = _____ x Price Weight = Total Vendor Points

Firm A: \$75,000 ÷ \$75,000 = 1 x 30 = **30 Points**

Firm B: \$75,000 ÷ \$80,000 = .9375 x 30 = **28.13 Points**

The weight assigned to various selection criteria will determine which bidder/proposer is selected, so the percentage weights should be determined carefully.

The selection committee may interview firms whose proposals are determined to be the most consistent with the objectives of the overall transit system. The award of a contract is subject to approval by the governing body and WisDOT. If the selection committee or procuring agency conducts negotiations prior to the award of the contract, it will negotiate with all proposers in the competitive range, i.e., all offers that it determines have a reasonable chance of being selected based on cost or other factors.

The award of the contract will be made to the responsible firm whose proposal is most advantageous to the procurement agency's program with price and other factors considered.

The procuring agency will notify each proposer by certified mail of its selection within five business days from the date of the award.

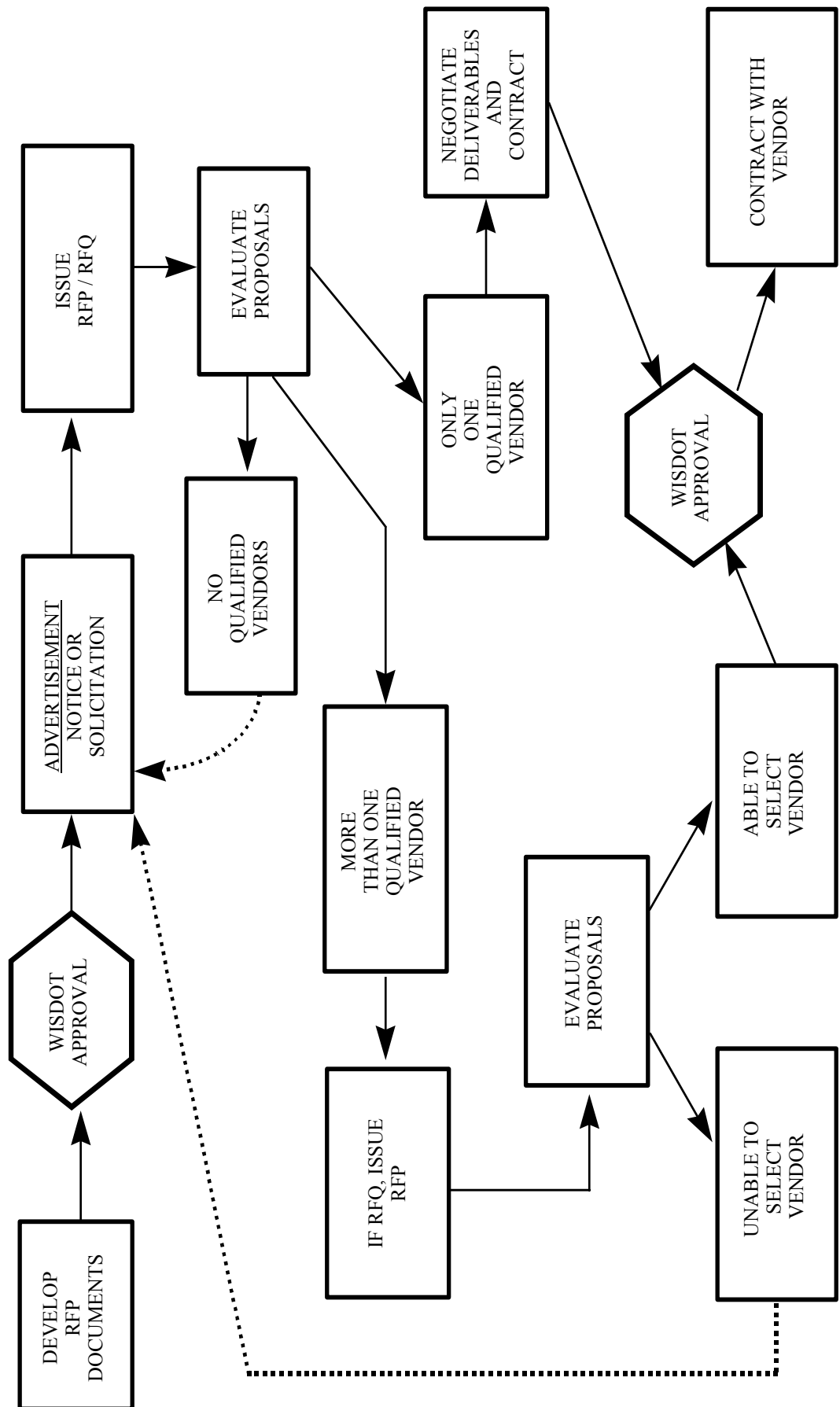
11. Complaint (or Protest) Procedure

Any bidder/proposer complaint should be received by the procuring agency's project manager within five working days of the formal written receipt of the award decision. The complainant can informally express any concerns or questions in person or by phone. The relative strengths and weaknesses of the proposals can be discussed along with the reasons the complainant's proposal was unsuccessful.

If the complainant's concerns cannot be satisfied through an informal process, a written complaint should be sent to the procuring agency within ten working days of their receipt of the award decision. The complaint will be reviewed following the protest procedures set forth in the procurement documents.

If the formal process fails to resolve the complaint, the complainant may refer the matter to the Director, Bureau of Transit and Local Roads. The Director's review is limited to a review of whether correct procedures have been followed. The Director shall not review the substance of a Municipality's decision to select a particular service provider.

PROCESS FOR PROCUREMENT OF TRANSPORTATION SERVICES AND/OR CONSULTING SERVICES



4.4 PROCEDURE FOR THE PURCHASE OF USED CAPITAL EQUIPMENT OR ROLLING STOCK

Although WisDOT *does not encourage nor endorse the purchase of used capital equipment*, there may be situations where it is more cost effective to obtain used equipment or the process may be justified by time constraints associated with new purchases. These purchases will be reviewed and approved on a case-by-case basis. The following procedure will be used.

1. Document the need to purchase used equipment or rolling stock.
2. Obtain three independent appraisals of the equipment or rolling stock to be purchased.
3. Submit copies of the appraisals to WisDOT for determination of allowable cost. (Allowable cost will be determined by averaging the three appraisals, but shall not exceed the applicable amount in your capital grant contract).
4. Upon notification of WisDOT's allowable cost, negotiate with seller.
5. Purchase used equipment from dealer/seller.
6. Send invoice to WisDOT for payment, (include documentation showing WisDOT as lienholder for vehicle purchases).

4.5 PROCEDURE FOR REFURBISHING VEHICLES - UNDER \$10,000 COST

This procedure covers the refurbishing/rehabilitation/remanufacturing of items where the estimated costs is under \$10,000. For refurbishing/rehabilitation/remanufacturing of equipment with an estimated cost over \$10,000, WisDOT requires that a formal bid process be undertaken. Please refer to the Procedures for Purchase of New Capital Equipment or Rolling Stock of \$10,000 or More.

1. Prepare specification/data sheet and submit to WisDOT.
2. Obtain at least three (3) written quotes from reputable refurbishing firms.
3. Select lowest quote that meets specifications and submit copies of quotes to WisDOT for review and approval.
4. Award contract to WISDOT-approved dealer.
5. Upon receipt and inspection of item(s), send invoice to WisDOT for payment.

5. APPENDIX

The Appendices of this Procurement Manual consist of Federal Circulars, Glossaries, Required and Suggested Forms to be used in procurements, Policies, References, and useful Contacts.

WisDOT urges you to become familiar with these materials to ensure that your procurements run smoothly and in a manner compliant with FTA requirements

5.1 APPENDIX A - FEDERAL CIRCULAR 4220 THIRD PARTY CONTRACTING REQUIREMENTS

The FTA Circular 4220, Third-Party Contracting Requirements, sets forth the requirements a subrecipient must adhere to in the solicitation, award and administration of its third-party contracts. These requirements are based on the common grant rules, federal statutes, Executive Orders and their implementing regulations, and FTA policy.

The following is the complete text of FTA Circular 4220 regarding Third Party Contracting regulations. We have included this document in the manual because of its importance.

The Circular ***applies to all FTA grantees and subrecipients that contract with outside sources under FTA assistance programs.*** If a subrecipient accepts operating assistance, the requirements of this circular apply to all transit-related third-party purchase orders and contracts. These requirements do not apply to procurements undertaken in support of capital projects completely accomplished without FTA funds or to those operating and planning contracts awarded by subrecipients that do not receive FTA operating and planning assistance.

(All appendices are at the back of this document)

5.2 APPENDIX B - FEDERALLY REQUIRED & OTHER MODEL CONTRACT CLAUSES

The successful contractor is expected to be familiar with and meet all stated or otherwise applicable Federal Motor Vehicle Safety Standards (FVMSS), Americans with Disabilities Act rules, Society of American Engineers (SAE) rules, and international Fastener Institute (IFI) standards.

The complete text of the FTA Required & Model Contract Clauses has been included in this appendix. These materials should be used as reference information by subrecipients in developing their procurement documents and contracts.

Clauses specifically related to vehicle purchases can be found in Appendix C. If you are procuring vehicles, you should refer to Appendix C instead of this appendix.

Updates of this information can be found by accessing the FTA website at www.fta.dot.gov

5.3 APPENDIX C - SUMMARY OF FTA CLAUSES FOR VEHICLE PURCHASES

Appendix C contains a further refinement of the contract and certification clauses found in Appendix B. If you are purchasing vehicles, the clauses included in this appendix represent those which are specifically applicable to vehicle purchases using Section 5307, 5309 or 5311 funding.

The subrecipient must also ensure that the successful contractor for vehicles is familiar with and meets other federal regulations including: Federal Motor Vehicle Safety Standards (FMVSS), Americans with Disability Act (ADA) rules, Society of American Engineers (SAE) rules and International Fastener Institute (IFI) standards.

5.4 APPENDIX D - PROCUREMENT PACKAGE REQUIRED FORMS

This appendix presents required forms and certifications to be included in the procurement package. The forms have been adapted from the Standard Bus Procurement Guidelines prepared by APTA and from FTA regulations. The forms serve to certify compliance by the procuring agency and contractors with federal requirements. Required forms are separated into two categories and are presented in the order below.

Procurements of \$100,000 or Less

1. Overall Federal Regulation Compliance (*certification from Subrecipient and bidder/proposer*)
2. Certification of Compliance with Bus Testing Requirements (*certification from manufacturer*)
3. Compliance With Specifications (*certification from bidder/proposer*)

Procurements of \$100,000 or More

1. Overall Federal Regulation Compliance (*certification from Subrecipient and bidder/proposer*)
2. Certification of Compliance with Bus Testing Requirements (*certification from manufacturer*)
3. Compliance With Specifications (*certification from bidder/proposer*)
4. Buy America Certification (*certification from manufacturer*)
5. Debarment and Suspension Certification (*certification from bidder/proposer*)
6. Lobbying Certification (*certification from bidder/proposer*)
7. DBE Approval Certification (*certification from bidder/proposer and manufacturer*)
8. Pre-Award/Post Delivery Buy America Compliance Certification (*certification from subrecipient*)
9. Pre-Award/Post Delivery Purchaser's Requirements Certification (*certification from subrecipient*)
10. Pre-Award/Post Delivery FMVSS Compliance or Exemption Certification (*certification from subrecipient*)
11. Post-Delivery Purchaser's Requirements Certification (*More than Ten Buses or Modified Vans - certification from subrecipient*)

When the *estimated* cost of your procurement is very close to the dollar threshold of \$100,000, it is always a good idea to include all forms for "Procurements of \$100,000 or More". You can then avoid unanticipated delays in your procurement process.

In order to assist subrecipients understand and use each form and certification appropriately, a cover sheet is included before each form. The cover sheet addresses the following for each form:

- The applicability of each form to the agency and the bidding contractor (note that not all forms are required for all procurements)
- A summary description of the form
- Directions as to what to do with each form

5.5 APPENDIX E - WisDOT SUGGESTED FORMS

This appendix presents suggested forms to be used in procurements to communicate information between the procuring agency, prospective bidders or proposers, and WisDOT. The forms are presented in the order shown below:

1. Procuring Agency and Contracting Officer
2. Request for Change or Approved Equal
3. Acknowledgment of Addenda
4. Offeror Service and Parts Support Data
5. Form for Proposal Deviation
6. Pricing Schedule (procuring agency)
7. Offer and Award

A cover sheet accompanies each form to assist subrecipients understand their appropriate use. The cover sheet addresses the following:

- The applicability of each form to the agency and the bidding contractor (note that not all forms pertain to all procurements)
- A summary description of the form
- Directions as to what to do with each form

5.6 APPENDIX F- WisDOT PROCUREMENT PROCESS CHECKLISTS

Use the following three checklists as specified below in your procurement process to “check” steps as they are completed. WisDOT utilizes these checklists to monitor your procurement process and your compliance with federal regulations. The checklists also provide documentation for your grant file on the processes used to acquire goods or services.

- Checklist for Pre-Bid/Pre-Proposal Process(*to be submitted to WisDOT with draft procurement packet*)
- Subrecipient Pre-Award Bid/Proposal Review Checklist (*to be submitted to WisDOT with letter requesting concurrence with Contractor Selection*)
- Checklist of Post-Delivery Audit - Reimbursement Process (*to be submitted to WisDOT with letter requesting reimbursement*)

5.7 APPENDIX G - WisDOT AVL/ITS POLICY

For subrecipients with capital projects that include the purchase of AVL or ITS technology, WisDOT has developed a funding policy governing these technologies. Subrecipients should be familiar with WisDOT's policy before pursuing AVL or ITS projects.

5.8 APPENDIX H - WisDOT TAXI MANAGEMENT FEE POLICY

Subrecipients contracting with private firms (including shared-ride taxi service) are required by FTA to offer that contract for open competition at least every five (5) years. Because the management fee is an issue that may surface during negotiation for years which are not bid, the subrecipient shall be familiar with WisDOT's policy regarding the management fee.

5.9 APPENDIX I - WisDOT CONTACTS AND OTHER RESOURCES

Questions or clarifications regarding this manual can be directed to the WisDOT Public Transit and Specialized Transit Section staff listed in the following page. Other transit contacts have been included as potential resources that subrecipients may contact directly for assistance with procurement questions.

WISDOT CONTACTS AND OTHER RESOURCES

Name / Email Address	Federal Assistance Program	Telephone / FAX
Richard Martin richard.martin@dot.state.wi.us	Sections 5307 & 5309	(608) 266-6812 (608) 266-0658
Larry Kieck lawrence.kieck@dot.state.wi.us	Section 5311 & RTAP	(608) 266-3973 (608) 266-0658
Polly Miller Polly.miller@dot.state.wi.us	Sections 5307, 5309 & 5311	(608) 266-8508 (608) 266-0658

Additional resources and/or contact are presented below:

U. S. Department of Transportation
Federal Transit Administration - Region V Office
200 Adams Street, Suite 2410
Chicago IL 60606-5232
Contact persons: Oscar Waller, Andrea Orr or Derek Davis
Tel. (312) 353-2883 or (312) 353-2789
Fax. (312) 886-0351

American Public Transit Association (APTA)
1201 New York Avenue N. W.
Washington, D. C. 20005-6141
Tel. (202) 898-4000
Fax. (202) 898-4070
[http\ www.apta.com](http://www.apta.com)
Technical questions: (202) 898-4087

Standard Bus Procurement Guidelines

Community Transportation Association of America
1341 G Street, N. W., Suite 600
Washington, D. C. 20005
Tel. (202) 628-1480
[http\ www.ctaa.org](http://www.ctaa.org)

REFERENCES

Best Practices Procurement Manual, FTA, May, 1996.

Capital Procurement Handbook, Arizona Department of Transportation, August, 1998

FTA Circular 4220.1D, Third Party Contracting Requirements, April 15, 1996.

Standard Bus Procurement Guidelines, American Public Transit Association.

Urbanized Area Formula Grants Management Workbook, Federal Transit Administration, 1997.

Note: Many of these publications are available on the internet at *www.fta.dot.gov*



U.S. Department
of Transportation

Federal Transit
Administration

CIRCULAR
FTA C 4220.1D

April 15, 1996

Subject: **THIRD PARTY CONTRACTING REQUIREMENTS**

1. **PURPOSE.** This circular sets forth the requirements a grantee must adhere to in the solicitation, award and administration of its third party contracts. These requirements are based on the common grant rules, Federal statutes, Executive orders and their implementing regulations, and FTA policy.

2. **CANCELLATION.** This circular cancels FTA Circular 4220.1C "Third Party Contracting Requirements," dated 10-1-95.

3. **REFERENCES.**

- a. Federal Transit Laws, 49 U.S.C. Chapter 53.
- b. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), P. L. 102-240.
- c. Sections 4001 and 1555 of the Federal Acquisition Streamlining Act of 1994, 41 U.S.C. § 403(11) and 40 U.S.C. § 481(b), respectively,
- d. 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- e. 49 CFR part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
- f. Executive Order 12612, "Federalism," dated 10-26-87.
- g. FTA Master Agreement.

4. **APPLICABILITY.** This circular applies to all FTA grantees and subrecipients that contract with outside sources under FTA assistance programs. If a grantee accepts operating assistance, the requirements of this circular apply to all transit-related third party purchase orders and contracts. These requirements do not apply to procurements undertaken in support of capital projects completely accomplished without FTA funds or to those operating and planning contracts awarded by grantees that do not receive FTA operating and planning assistance.

a. **States.** When procuring property and services under a grant, a State will follow the same procurement policies and procedures that it uses for procurements using non-Federal funds. States must, as a minimum, comply with the requirements of paragraphs 7m, 8a and b, and 9d of this circular and ensure that every purchase order and contract executed by it or a subrecipient using Federal funds includes all clauses required by

Federal statutes and executive orders and their implementing regulations. Subrecipients of states (excluding institutions of higher education, hospitals or other non-profit organizations) shall follow state law and procedures when awarding and administering contracts.

Regional transit authorities are not state agencies or instrumentalities for purposes of this circular.

If a transit authority receives funds both as a direct grantee and as a subrecipient from a State, the State may permit the transit authority to follow the requirements of this circular instead of State procurement requirements.

b. Other Recipients. Subrecipients of states which are institutions of higher education, hospitals or other nonprofit organizations, and all other FTA grantees will administer contracts in accordance with this circular.

5. POLICY. FTA's role in grantee procurements is reflective of Executive Order 12612, Federalism, which directs Federal agencies to refrain from substituting their judgment for that of their recipients unless the matter is primarily a Federal concern and to defer, to the maximum extent feasible, to the States to establish standards rather than setting national standards.

The National Performance Review Team and FTA grantees and their contractors have requested FTA to clarify the requirements applicable to grantee procurements. In response, FTA has decided to reduce its role in grantee third party procurement activity in several important respects. At the same time, to ensure compliance with Federal procurement requirements, FTA intends to make guidance and technical assistance more accessible to its grantees consistent with its Federal oversight responsibilities.

a. Grantee Self-Certification. Recognizing that most FTA grantees have several years experience with the third party contracting requirements of the "common grant rules" (49 CFR parts 18 and 19), FTA intends to rely primarily on grantees' "self-certifications" that their procurement system meets FTA requirements to support the required finding that a grantee has the technical capacity to comply with Federal procurement requirements.

Consequently, all grantees must "self certify" in the Annual Certification/Assurance Process.

FTA will monitor compliance as part of its routine oversight responsibilities. If FTA becomes aware of circumstances which might invalidate a grantee's self-certification, FTA will investigate and recommend appropriate measures to correct whatever deficiency may exist.

b. FTA Pre-award Review of Third Party Contracts. Consistent with a reduced Federal role in its grantees' procurements, FTA intends to rely to a greater extent on the validity of each grantee's self certification rather than on FTA's pre-award review of third party contracts. Accordingly, this circular eliminates FTA pre-award review of third party contracts in favor of periodic, post grant reviews to ensure that grantees do in fact comply with Federal requirements and standards. Grantees are always free to request FTA's pre-award review of their procurements. Conversely, if FTA requests to review the record of a particular procurement, grantees must make their procurement documents available for FTA's pre-award (or post-award) review.

c. Procurement System Reviews. FTA is required by 49 U.S.C. § 5307 to perform reviews and evaluations of grant programs and to perform a full review and evaluation of the performance of grantees in carrying out grant programs with specific reference to their compliance with statutory and administrative requirements. Accordingly, FTA will perform procurement system reviews as part of its on-going oversight responsibility. FTA may recommend "best practices" in order to assist the grantee in improving its procurement practices. In such cases, FTA will identify such recommendations as "Advisory."

d. FTA Procurement Technical Assistance. FTA will also provide procurement training and technical assistance at both regional and national levels by offering various instructional courses and by issuing an FTA

Third Party Procurement Manual. The manual will contain procurement guidance and "best practices" that grantees may choose to follow in performing their procurement functions. In such cases, FTA will identify such recommendations as "Advisory."

e. Contract Clauses and Provisions. The Master Agreement, issued annually, lists all the FTA and other Federal cross-cutting requirements applicable to FTA grantees. Many of these requirements are related to grantee procurements. Further guidance and suggested wording for contract clauses and provisions will be provided in the Third Party Procurement Manual.

f. Use of General Services Administration (GSA) Schedules. As a result of the Federal Acquisition Streamlining Act, certain grantees will be permitted to make purchases through GSA supply schedules in accordance with GSA published procedures. Guidance will be provided in the Third Party Procurement Manual.

6. DEFINITIONS. All definitions in 49 U.S.C. § 5302 are applicable to this circular. The following definitions are provided:

a. "Grantee" means the public or private entity to which a grant or cooperative agreement is awarded by FTA. The grantee is the entire legal entity even if only a particular component of the entity is designated in the assistance award document.

For the purposes of this circular, "grantee" also includes any subrecipient of the grantee. Furthermore, a grantee is responsible for assuring that its subrecipients comply with the requirements and standards of this circular, and that subrecipients are aware of requirements imposed upon them by Federal statutes and regulations.

b. "State" means any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a state exclusive of local governments. "State" does not include a county, municipality, city, town, township, local public authority (which includes any public and Indian housing agency under the United States Housing Act of 1937) school district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity (such as a regional transit authority), or any agency or instrumentality of a local government.

c. "FTA" refers to the Federal Transit Administration.

d. "Third party contract" refers to any purchase order or contract awarded by a grantee to a bidder/proposer or contractor using Federal financial assistance awarded by FTA.

7. GENERAL PROCUREMENT STANDARDS APPLICABLE TO THIRD-PARTY PROCUREMENTS.

a. Conformance with State and Local Law. Grantees and subrecipients shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in this circular.

b. Contract Administration System. Grantees shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

c. Written Standards of Conduct. Grantees shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of the grantee shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent, or Board member,
- (2) Any member of his/her immediate family,
- (3) His or her partner, or
- (4) An organization that employs, or is about to employ, any of the above.

The grantee's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

d. Ensuring Most Efficient and Economic Purchase. Grantee procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

e. Intergovernmental Procurement Agreements. To foster greater economy and efficiency, grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services. The requirements and standards of this circular apply to procurements entered into under such agreements using FTA funds.

f. Use of GSA Schedules And Excess Or Surplus Federal Property. Once GSA develops procedures, State and local grantees may use Federal supply schedules (FSS) of GSA for the procurement of certain goods and services, 40 U.S.C. § 481(b). Price lists will then be available from GSA and may include an administrative fee for GSA in the price of items on the schedule. Grantees must contact GSA for guidance on using the GSA supply schedules.

Grantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property, whenever such use is feasible and reduces project costs.

g. Use of Value Engineering in Construction Contracts. Grantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost.

h. Awards to Responsible Contractors. Grantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

- i. Written Record of Procurement History. Grantees shall maintain records detailing the history of a procurement. At a minimum, these records shall include;

- (1) the rationale for the method of procurement,

- (2) selection of contract type,
- (3) reasons for contractor selection or rejection, and
- (4) the basis for the contract price

j. Use of Time and Materials Type Contracts. Grantees will use time and material type contracts only:

- (1) After a determination that no other type of contract is suitable; and
- (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

k. Responsibility for Settlement of Contract Issues/Disputes. Grantees alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements.

These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibility under its contracts.

FTA will not substitute its judgment for that of the grantee or subrecipient, unless the matter is primarily a Federal concern. Violations of the law will be referred to the local, State, or Federal authority having proper jurisdiction.

l. Written Protest Procedures. Grantees shall have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.

Reviews of protests by FTA will be limited to a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

m. Contract Period of Performance Limitation. Grantees shall not enter into any contract with a period of performance exceeding five (5) years inclusive of options without prior written FTA approval.

8. COMPETITION.

a. Full and Open Competition. All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to;

- (1) Unreasonable requirements placed on firms in order for them to qualify to do business;
- (2) Unnecessary experience and excessive bonding requirements;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;

- (4) Noncompetitive awards to any person or firm on retainer contracts;
- (5) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- (6) The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
- (7) Any arbitrary action in the procurement process.

b. Prohibition Against Geographic Preferences. Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

c. Written Procurement Selection Procedures. Grantees shall have written selection procedures for procurement transactions. All solicitations shall:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

Detailed product specifications should be avoided if at all possible. When it is impractical or

uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used.

A grantee shall use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. Further, a grantee wishing to use "brand name or equal" must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

- (2) Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

d. Prequalification Criteria. Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.

9. METHODS OF PROCUREMENT. The following methods of procurement may be used as appropriate:

a. Procurement by Micro-Purchases. Procurement by micro-purchases are those purchases under \$2,500. Purchases below that threshold may be made without obtaining competitive quotations if the grantee determines that the price is fair and reasonable. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers (in the local area) and no splitting of procurements to avoid competition. The Davis-Bacon Act applies to construction contracts between \$2,000 and \$2,500. Minimum documentation is required: A determination that the price is fair and reasonable and how this determination was derived.

b. Procurement by Small Purchase Procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than \$2,500 but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) currently set at \$100,000. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

c. Procurement By Sealed Bids/Invitation For Bid (IFB). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- (a) A complete, adequate, and realistic specification or purchase description is available;
- (b) Two or more responsible bidders are willing and able to compete effectively for the business;
- (c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- (d) No discussion with bidders is needed.

(2) If this procurement method is used, the following requirements apply:

- (a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
- (b) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;
- (c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (d) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(e) Any or all bids may be rejected if there is a sound documented business reason.

- (3) The sealed bid method is the preferred method for procuring construction if the conditions in paragraph 9c(1) above apply.

d. Procurement By Competitive Proposal/Request for Proposals (RFP). The competitive proposal method of procurement is normally conducted with more than one source submitting an offer i.e., proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used the following requirements apply:

- (1) Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance.
- (2) Proposals will be solicited from an adequate number of qualified sources.
- (3) Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.
- (4) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered.

e. Procurement Of Architectural and Engineering Services (A&E). Grantees shall use competitive proposal procedures based on the Brooks Act when contracting for A&E services as defined in 40 U.S.C. § 541. Other types of services considered A&E services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer.

The Brooks Act requires that:

- (1) An offeror's qualifications be evaluated;
- (2) Price be excluded as an evaluation factor;
- (3) Negotiations be conducted with only the most qualified offeror; and
- (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

This "qualifications based procurement method" can only be used for the procurement of A&E services. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

These requirements apply except to the extent any state adopts or has adopted by statute a formal procedure for the procurement of architectural and engineering services.

f. Procurement By Noncompetitive Proposals (Sole Source). Sole Source procurements are accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.

- (1) Procurement by noncompetitive proposals may be used only when the award of a contract is unfeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:
 - (a) The item is available only from a single source;
 - (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (c) FTA authorizes noncompetitive negotiations;
 - (d) After solicitation of a number of sources, competition is determined inadequate; or
 - (e) The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.
- (2) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

g. Options. Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options, the requirements below apply:

- (1) Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
- (2) Exercise of Options.
 - (a) A grantee must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
 - (b) An option may not be exercised unless the grantee has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

10. CONTRACT COST AND PRICE ANALYSIS FOR EVERY PROCUREMENT ACTION. Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

a. Cost Analysis. A cost analysis must be performed when the offeror is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, e.g., under professional consulting and architectural and engineering services contracts.

A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

b. Price Analysis. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

c. Profit. Grantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

d. Federal Cost Principles. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. Grantees may reference their own cost principles that comply with applicable Federal cost principles.

e. Cost Plus Percentage of Cost Prohibited. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

11. BONDING REQUIREMENTS. For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the grantee, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;

b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and

c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from contractors are as follows:

(1) 50% of the contract price if the contract price is not more than \$1 million;

(2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected.

12. PAYMENT PROVISIONS IN THIRD PARTY CONTRACTS.

a. Advance Payments. FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

b. Progress Payments. Grantees may use progress payments provided the following requirements are followed:

- (1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.
- (2) When progress payments are used, the grantee must obtain title to property (materials, work in progress, and finished goods) for which progress payments are made. Alternative security for progress payments by irrevocable letter of credit or equivalent means to protect the grantee's interests in the progress payments may be used in lieu of obtaining title.

13. LIQUIDATED DAMAGES PROVISIONS. A grantee may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine.

The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

14. CONTRACT AWARD ANNOUNCEMENT. If a grantee announces contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the grantee shall:

- a. Specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and
- b. Express the said amount as a percentage of the total costs of the planned acquisition.

15. CONTRACT PROVISIONS. All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)
- b. Termination for cause and for convenience by the grantee or subrecipient including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

16. STATUTORY AND REGULATORY REQUIREMENTS. A current and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement. Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel and manufactured goods will be subject to the "Buy America" requirements in 49 C.F.R. Part 661. Further guidance concerning these requirements and suggested wording for contract clauses may be found in FTA's Third Party Procurement Manual.

For specific guidance concerning the cross-cutting requirements of other Federal agencies, grantees are advised to contact those agencies.

Gordon J. Linton

Administrator

Distribution:

FTA Headquarters Offices (T-W-2)

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FTA Regional Offices (T-X-2)

FTA Grantees

September 24, 1997

FTA Circular 4220.1D, "Third Party Contracting Requirements," dated 4-15-96, was issued with administrative errors. Please make the following changes (outlined in bold and underlined) to your copy of the circular:

Page 2, paragraph 4a, line 5 should be changes to read: ". . . with the requirements of paragraphs 7 m, 8a and b, and 9e."

Page 3, paragraph 5e, line 2 should be changed to read: ". . . issued annually, list many but not all of the FTA and other Federal . . ."

Page 16, paragraph 16, line 1 should be changed to read: "A current but not all inclusive list of statutory and regulatory requirements . . ."

Dorrie Y. Aldrich

Associate Administrator for Administration

U.S. Department of Transportation

Federal Transit Administration

1. DRUG AND ALCOHOL TESTING

49 U.S.C. § 533149 CFR Part 655

Applicability to Contracts The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 655, unless the contract is for maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Model Clause/Language

Introduction FTA's drug and alcohol rules, 49 CFR 655, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 655, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

Drug and Alcohol Testing Option 1

The contractor agrees to:

(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 655.

Drug and Alcohol Testing Option 2

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655 produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 655 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Drug and Alcohol Testing Option 3

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 655 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 655; OR (c) submit for review and concurrence before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

2. BUY AMERICA REQUIREMENTS

49 U.S.C. § 5323 (j) 49 CFR Part 661

Applicability to Contracts The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Mandatory Clause/Language The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. § 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. § 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. § 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. § 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. § 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. § 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____
Signature _____
Company Name _____
Title _____

3. CHARTER BUS REQUIREMENTS

49 U.S.C. § 5323(d) 49 CFR Part 604

Applicability to Contracts The Charter Bus requirements apply to the following type of contract:
Operational Service Contracts.

Flow Down Requirements The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. § 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

3. SCHOOL BUS REQUIREMENTS

49 U.S.C. § 5323(F) 49 CFR Part 605

Applicability to Contracts The School Bus requirements apply to the following type of contract:
Operational Service Contracts.

Flow Down Requirements The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

School Bus Operations - Pursuant to 49 U.S.C. § 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. § 1241 46 CFR Part 381

Applicability to Contracts The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. § 7701 et seq. 49 CFR Part 41

Applicability to Contracts The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down. The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language. The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. § 6321 et seq. 49 CFR Part 18

Applicability to Contracts The Energy Conservation requirements are applicable to all contracts.

Flow Down The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. CLEAN WATER REQUIREMENTS

33 U.S.C. § 1251

Applicability to Contracts The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. BUS TESTING

49 U.S.C. § 5323(c) 49 CFR Part 665

Applicability to Contracts The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Flow Down The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. § 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS. The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. § A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

9. PRE-AWARD AND POST DELIVERY REVIEW REQUIREMENTS

49 U.S.C. § 5323 49 CFR Part 663

Applicability to Contracts These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Flow Down These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language - Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation, "Buy America Requirements - Surface Transportation Assistance Act of 1982, as amended," 49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. § A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

10. LOBBYING

31 U.S.C. 1352 49 CFR Part 19 49 CFR Part 20

Applicability to Contracts. The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down. The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. § 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. § 5325 18 CFR 18.36 49 CFR 633.17

Applicability to Contracts. Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down. FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language. The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subrecipient of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. § 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subrecipient of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. § 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, an hospital or other non-profit organization and is the FTA Recipient or a subrecipient of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subrecipient of the FTA Recipient in accordance with 49 U.S.C. § 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. § 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller

General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agree to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

12. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts The Federal Changes requirement applies to all contracts.

Flow Down The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language. No specific language is mandated. The following language has been developed by FTA.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA , as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

13. BONDING REQUIREMENTS

Applicability to Contracts For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

- (1) 50% of the contract price if the contract price is not more than \$1 million;
- (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down Bonding requirements flow down to the first tier contractors.

Model Clauses/Language FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

Bid Bond Requirements (Construction)

- (a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole. The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.
- (d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
 1. The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

14. CLEAN AIR

42 U.S.C. 7401 et seq 40 CFR 15.61 49 CFR Part 18

Applicability to Contracts The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS

42 U.S.C. 696240 CFR Part 247 Executive Order 12873

Applicability to Contracts The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Flow Down These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. DAVIS-BACON ACT

40 USC § 276a -276a-5 (1995) 29 CFR § 5 (1995)

Applicability to Contract Construction contracts over \$2,000.00

Flow Down Applies to third party contractors and subcontractors

Model Clause/Language (The language in this clause is mandated under the DOL regulations at 29 C.F.R. § 5.5.)

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iii) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated

in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(iv)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The [**insert name of grantee**] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [**insert name of grantee**] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or

mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [insert name of grantee] for transmission to the Federal Transit Administration.

The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or

otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

40 U.S.C. § 327 -333 (1995) 29 C.F.R. § 5 (1995) 29 C.F.R. § 1926 (1995)

Applicability to Contracts Section 102 of the Act, which deals with overtime requirements, applies to:

- all construction contracts in excess of \$2,000 and;
- all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) in excess of \$2,500.

(The dollar threshold for this requirement is contained in the current regulation 29 C.F.R. § 5.15.)

Section 107 of the Act which deals with OSHA requirements applies to construction contracts in excess of \$2,000 only. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

Flow Down Applies to third party contractors and subcontractors.

Model Clauses/Language Pursuant to Section 102 (Overtime):

(These clauses are specifically mandated under DOL regulation 29 C.F.R. § 5.5 and when preparing a construction contract in excess of \$2,000 these clauses should be used in conjunction with the Davis-Bacon Act clauses as discussed previously. For nonconstruction contracts, this is the only section required along with the payroll section.)

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The (write in the name of the grantee or recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours

and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(Section 102 nonconstruction contracts should also have the following provision:)

(5) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

Section 107 (OSHA):

(This section is applicable to construction contracts only)

Contract Work Hours and Safety Standards Act - (i) The Contractor agrees to comply with section 107 of the Contract t Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii)**Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

18. COPELAND ANTI-KICKBACK ACT

40 U.S.C. § 276c (1995) 29 C.F.R. § 3 (1995) 29 C.F.R. § 5 (1995)

Applicability to Contracts All construction contracts in excess of \$2,000.

Flow Down Applicable to all third party contractors and subcontractors.

Model Clauses/Language 3.1 of the Copeland Act makes it clear that the purpose of the Act is to assist in "the enforcement of the minimum wage provisions of the Davis- Bacon Act." In keeping with this intent DOL has included a section on the Copeland Act in the mandatory language of the Davis-Bacon provisions. The language can be found at §5.5(a)(5) of the Davis-Bacon model clauses and reads as follows:

Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

Since there is no specific statutory or regulatory requirements for additional mandatory language, I would recommend that no additional clauses are necessary for this provision.

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts Applicable to all contracts.

Flow Down Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq. 49 CFR Part 31 18 U.S.C. 1001 49 U.S.C. § 5307

Applicability to Contracts These requirements are applicable to all contracts.

Flow Down These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the

penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION

49 U.S.C. § Part 18 FTA Circular 4220.1D

Applicability to Contracts All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If

this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the

Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience of Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

22. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29 Executive Order 12549

Applicability to Contracts Executive Order 12549, as implemented by 49 CFR Part 29, prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, recipients are required to submit a certification to the effect that they will not enter into contracts over \$100,000 with suspended or debarred contractors and that they will require their contractors (and their subcontractors) to make the same certification to them.

Flow Down Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over \$100,000.

Model Clause/Language (Instructions) The certification and instruction language is contained at 29 CFR Part 29, Appendix B, and must be included in IFB's and RFP's [for inclusion by contractors in their bids or proposals] for all contracts over \$100,000, regardless of the type of contract to be awarded.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Lower Tier Covered Transactions (Third Party Contracts over \$100,000).

Instructions for Certification

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below .**

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant

knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, (Recipient) may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to (Recipient) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact (Recipient) for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by (Recipient).

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, (Recipient) may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

23. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000 42 U.S.C. § 6102, 42 U.S.C. § 12112 42 U.S.C. § 12132, 49 U.S.C. § 5332 29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts The Civil Rights Requirements apply to all contracts.

Flow Down The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

- (1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- (2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18FTA Circular 4220.1D

Applicability to Contracts All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401 49 CFR Parts 18 and 19

Applicability to Contracts Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

Model Clause/Language The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - This following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by

Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, 5311, and 533329 CFR Part 215

Applicability to Contracts The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language Since no mandatory language is specified, FTA had developed the following language. **Transit Employee Protective Provisions.** (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C 5311 in Nonurbanized Areas** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Applicability to Contracts DBE provisions only apply to all DOT-assisted contracts.

Flow Down These requirements only flow to FTA recipients who receive at least \$250,000 in FTA capital and operating funds, exclusive of funds for transit vehicle purchases [reference 49 CFR 23.67], or \$100,000 in FTA planning funds.

Model Clause/Language No specific language is mandated, but FTA has included language developed by Southwest Ohio Regional Transit Authority (SORTA).

Disadvantaged Business Enterprise Provision 1. The Federal Fiscal Year goal has been set by (name of grantee) in an attempt to match projected procurements with available qualified disadvantaged businesses. (name of grantee) goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by (name of grantee) as set forth by the Department of Transportation Regulations 49 C.F.R. Part 26, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, (name of grantee) may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

(a) **Policy** - It is the policy of the Department of Transportation and (name of grantee) that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts. It is further the policy of (name of grantee) to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of (name of grantee) procurement activities are encouraged.

(b) **DBE obligation** - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, (name of grantee) may declare the contractor noncompliant and in breach of contract.

(d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with (name of grantee) DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of (name of grantee) and will be submitted to (name of grantee) upon request.

(e) (Name of grantee) will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- * Identification of qualified DBE
- * Available listing of Minority Assistance Agencies
- * Holding bid conferences to emphasize requirements

2. DBE Program Definitions, as used in the contract:

(a) Disadvantaged business "means a small business concern":

- i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. or

iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

(b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

(c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

29. STATE AND LOCAL LAW DISCLAIMER

Applicability to Contracts This disclaimer applies to all contracts.

Flow Down The Disclaimer has unlimited flow down.

Model Clause/Language FTA has developed the following language.

State and Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1D

Applicability to Contracts The incorporation of FTA terms applies to all contracts.

Flow Down The incorporation of FTA terms has unlimited flow down.

Model Clause/Language FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

31. FLY AMERICA REQUIREMENTS

41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

A. Buy America (\$100,000 threshold)

The contractor agrees to comply with 49 U. S. C. 5323 (j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 53230(j)(2)(C) and 49 CFR 661.1 1. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder/proposer or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

B. Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

C. Clean Water (\$100,000 threshold)

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

5.10 *The contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.*

D. Bus Testing

The contractor [manufacturer] agrees to comply with 49 U. S. C., Section 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph I above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in

configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

E. Federal Changes

The contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to so comply shall constitute a material breach of the contract.

F. Lobbying Restrictions (\$100,000 threshold)

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

G. No Government Obligation to Third Parties

1. The purchaser and contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

H. Program Fraud and False or Fraudulent Statements or Related Acts.

1. The contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the project. Upon execution of the underlying contract, the contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the federal government deems appropriate.
2. The contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U. S. C. 5307, the government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S. C. 5307(n)(1) on the contractor, to the extent the federal government deems appropriate.

3. The contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

I. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1D dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with (name of grantee) requests which would cause (name of grantee) or WisDOT to be in violation of the FTA terms and conditions.

J. Pre-Award and Post-Delivery Audit Requirements (\$100,000 threshold)

The contractor agrees to comply with 49 U. S. C. 5323 (1) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

- (1) **Buy America Requirements:** The contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the bidder/offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- (2) **Solicitation Specification Requirements:** The contractor shall submit evidence that it will be capable of meeting the bid specifications.
- (3) **Federal Motor Vehicle Safety Standards (FMVSS):** The contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted vehicles will not be subject to FMVSS regulations.

The required pre-award and post-delivery audit forms are included in Appendix D. These forms are required as part of the overall procurement process, and the selected bidder/proposer must complete these forms in order to meet WisDOT requirements

K. Clean Air (\$100,000 threshold)

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. . The contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

L. Civil Rights

The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the

contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. The contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

(3) The contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

M. Breaches and Dispute Resolution (\$100,000 threshold)

(1) **Disputes** - Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the contractor and the contractor shall abide by the decision.

(2) **Performance During Dispute** - Unless otherwise directed by (recipient), contractor shall continue performance under this contract while matters in dispute are being resolved.

(3) **Claims for Damages** - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

(4) **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (recipient) and the contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (recipient) is located.

- (5) **Rights and Remedies** - The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (recipient), (architect) or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

N. Termination *

(1) **Termination for Convenience (General Provision)** The (recipient) may terminate this contract, in whole or in part, at any time by written notice to the contractor when it is in the government's best interest. The contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to (recipient) to be paid the contractor. If the contractor has any property in its possession belonging to the (recipient), the contractor will account for the same, and dispose of it in the manner the (recipient) directs.

(2) **Termination for Default [Breach or Cause] (General Provision)** If the contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contract, or if the contractor fails to comply with any other provisions of the contract, the (recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (recipient) that the contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the contractor, the (recipient), after setting up a new delivery of performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

** (Note that other related termination language can be found in Appendix B)*

Overall Federal Regulation Compliance
(Subgrantee and Bidder/Proposer Certifies)

Applicability: This form assures WisDOT that the procurement process is in compliance with federal regulations.

Summary Description: Subgrantees and bidders/proposers must separately certify and execute the form.

What To Do With This Form: The form, executed by bidders, must be submitted with bids to the procuring agency. The form, executed by subrecipients, must be submitted to WisDOT along with a copy of the bidders/proposer's certification prior to awarding a contract to the bidder/proposer.

Overall Federal Regulation Compliance***(Subrecipient to WisDOT)***

All contractual provisions required by USDOT, as set forth in the FTA Circular 4220.1D, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any _____ (subrecipient) requests which would cause _____ (subrecipient) to be in violation of the FTA and WisDOT grant terms and conditions.

Bidder/proposer Representative Signature

Bidder/proposer Representative Name and Title

Bidder/Proposer/Manufacturer Company

Date**Or:**

Subrecipient Representative Signature

Subrecipient Representative Name and Title

Subrecipient Name

Date

Certification of Compliance with Bus Testing Requirements

(Bidder/proposer obtains certification from manufacturer)

Applicability: This form is to be included in the procurement package and used by the manufacturer to certify to the procuring agency that new buses have been tested, or that they do not need to be tested. This form is identical for both IFB and RFP procurement methods.

Summary Description: The FTA is responsible for ensuring that all new model rolling stock purchased or leased by FTA recipients are tested at the Altoona Testing Facilities. In addition, buses manufactured with a major change in components or configuration from the original bid request shall also be tested for safety, reliability, performance, structural durability, noise level and fuel economy. The manufacturer must agree to comply with 49 U.S.C. § 5323(c) and FTA's implementing regulation at 49 CFR Part 665. Please see the Standard Bus Procurement Guidelines section 2.10.2 "Bus Testing" page 93. The manufacturer will provide the procuring agency a copy of the final test report prior to the agency's final acceptance of the vehicles.

Initially, the bus testing requirement applied to three categories of vehicles:

- Heavy-duty large buses (with a useful life of 12 years or 500,000 miles)
- Heavy-duty medium buses (with a useful life of 10 years or 350,000 miles)
- Medium-duty buses (with a useful life of 7 years or 200,000 miles)

FTA extended the bus testing requirements to the following categories of small vehicles in 1994:

- Vehicles built from unmodified mass-produced chassis
- Vehicles manufactured from modified mass-produced chassis or vans
- Vehicles manufactured from non-mass produced chassis or vans

What To Do With This Form: A copy of the signed certification form must be kept in the procuring agency's procurement files. A copy of the certification must be included in the pre-award packet submitted to WisDOT. If the vehicle requires testing because it is a new model or because of a major change in components or configuration, this form must be resubmitted by the subgrantee as part of the post-delivery package with a notation that the test results have been received from the manufacturer.

Certificate Of Compliance with Bus Testing Requirement***(Bidder/proposer obtains certification from manufacturer)***

The undersigned certifies that the vehicle offered in this procurement complies and will, when delivered, comply with 49 U.S.C. § 5323(c) and FTA's implementing regulation at 49 CFR Part 665 according to the alternative identified below.

(mark one and only one of the three blank spaces, with an "x")

1. _____ The buses offered herewith have been tested in accordance with 49 CFR Part 665 on _____ (date). The vehicles being sold should have the identical configuration and components as the vehicle in the test report, which must be submitted with this Offer. If the configuration or components are not identical, the manufacturer shall provide with its offer a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
2. _____ The manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), and submits with this Offer the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.
3. _____ The vehicle is a new model, or a bus produced with a change in components or configuration, and will be tested and the results will be submitted to the Procuring Agency prior to acceptance of the first bus.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 3 1. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Name: _____

Signature: _____

Company Name (Manufacturer): _____

Title: _____

Compliance With Specifications

(Bidder/proposer certifies)

Applicability: This form is included in the procurement package to assure compliance with federal provisions relating to procurement.

Summary Description: Bidders must assure the procuring agency that they will comply with all technical bid specifications, including all applicable ADA requirements.

What To Do This Form: This form should be executed by the bidder/proposer and submitted to WisDOT by the subrecipient with the bids or proposals before the award of a contract.

Compliance With Specifications***(Bidder/proposer certifies)***

The bidder/proposer hereby certifies that it will comply with the technical specifications issued by the _____ (subrecipient). **The bidder or proposer warrants and certifies that of the following three paragraphs, paragraph A or B or C is true (✓ check one):**

- A. _____ The bidder/proposer hereby states that it will comply with the specifications in all areas. (This means that there are no exceptions to the technical specifications, no matter how minor. If you have any doubts, check paragraph C or call the procuring agency for assistance.)
- B. _____ The bidder/proposer hereby states that it will comply with the specifications in all areas except those where requests for clarification were approved prior to bid submission.
- C. _____ The bidder/proposer hereby states that it will comply with the specifications in all areas except those noted on the attached page. The bidder/proposer understands that those exceptions to the specifications may be considered non-responsive, and may be rejected.

Date: _____

Name: _____

Signature: _____

Company Name (bidder/proposer): _____

Title: _____

Buy America Certification

*(Required for Procurements of \$100,000 or more)
(Bidder/proposer obtains certification from manufacturer)*

Applicability: These forms are included in the procurement package and submitted by prospective contractors to the procuring agency **only when the purchase price of goods or equipment is \$100,000 or more**. The form is identical for both the RFP and IFB procurement methods. Separate forms cover procurements of rolling stock and other procurements of steel, iron, and manufactured products.

Summary Description: Buy America is a domestic products provision which requires that steel, iron, and manufactured products are produced in the United States, unless a waiver has been granted. Rolling stock (vehicles), not subject to a general waiver, must contain a minimum of 60% domestic content, and have final assembly in the United States.

The contractor signs a certification of either compliance or noncompliance with the Buy America Requirements. ***If certifying compliance, the contractor must submit documentation to the procuring agency that lists product component and sub-component parts, their origin and costs, and the location of the final assembly point, including a description of activities to take place at the final assembly, and the costs involved.*** On procurements of 10 or more vehicles, on site inspectors are required to conduct a post-delivery inspection to assure that the purchaser's and Federal Motor Vehicle Safety Standards (FMVSS) are met.

General waivers to this provision may be obtained and are explained in 49 CFR 661.7. They include 15-passenger vans or wagons manufactured by the Chrysler Corporation, microcomputer equipment and software, or if it can be shown that materials required to produce the products are not available or are of poor quality in the United States. A waiver may also be given if the Buy America provision is inconsistent with the public interest.

What To Do With These Forms: Copies of these forms, **signed by the manufacturer**, certifying compliance or non-compliance with the Buy America Requirements, must be kept in the procuring agency's file for each procurement. In addition, the procuring agency submits the completed form with other documentation to WisDOT to obtain concurrence with the procurement. WisDOT will not approve a bid without a signed copy of this form.

**BUY AMERICA CERTIFICATION FOR THE PROCUREMENT OF BUSES, OTHER
ROLLING STOCK, AND ASSOCIATED EQUIPMENT**

Certificate of Compliance

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S. C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name (Manufacturer): _____

Title: _____

Certificate of Non-Compliance

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S. C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S. C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name (Manufacturer): _____

Title: _____

Describe the nature of the exception: _____

**BUY AMERICA CERTIFICATION FOR THE PROCUREMENT OF STEEL, IRON, OR
MANUFACTURED PRODUCTS****Certificate of Compliance**

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S. C. Section 5323(j)(1) and the applicable regulations of 49 C.F.R. 661:

Date: _____

Signature: _____

Company Name (Manufacturer): _____

Title: _____

Certificate of Non-Compliance

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S. C. Section 5323(j)(1), but may qualify for an exception pursuant to 49 U.S. C. Sections 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name (Manufacturer): _____

Title: _____

Describe the nature of the exception: _____

Debarment and Suspension Certification

*(Required for Procurements of \$100,000 or More)
(Bidder/Proposer Certifies)*

Applicability: This form is **only required for purchases of \$100,000 or more** and applies to the offeror, as well as any sub-contractors used for contracts of \$100,000 or more. This form is identical for both the IFB and RFP procurement methods.

Summary Description: Recipients of Federal Transit Administration (FTA) funds are prohibited from contracting for goods or services from organizations or contractors who have been debarred or suspended from receiving Federally-assisted contracts, and must certify that they will not enter into a contract of \$100,000 or more with any such contractor. Contractors also must certify to the procuring agency that they, or any of their sub-contractors are not suspended or debarred from participation in a Federally-assisted contract.

What To Do With This Form: This form should be included in the procurement package and must be **signed by the prospective contractor** and returned to the procuring agency with the bid or proposal. Copies signed by the prospective contractor must be kept on file by the procuring agency. In addition, the procuring agency submits the completed form with other documentation in order to obtain WisDOT concurrence with the procurement.

Debarment and Suspension Certification (Lower Tier Covered Transaction)

(Required for Procurements of \$100,000 or More)
(Bidder/proposer Certifies)

The prospective lower tier participant (Offeror) certifies, by submission of this Offer, that neither it nor its "principals", as defined at 49 C.F.R. § 29.105(p), is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

If the prospective lower tier participant (Offeror) is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so, by placing an "X" in the following space _____.

**THE BIDDER OR OFFEROR, _____, CERTIFIES OR
AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS
CERTIFICATION AND EXPLANATION, IF ANY**

Signature of the Bidder or Offeror's Authorized
Official

Name and Title of the Bidder/Proposer's Authorized
Official

Date

Lobbying Certification

(Required for Procurements of \$100,000 or More)
(Bidder/proposer Certifies)

Applicability: This form is **only required if the procurement is \$100,000** or more. For contracts of \$100,000 or more the offeror as well as its sub-contractors must sign this certification, and submit it to the procuring agency. This form is identical for both the IFB and RFP procurement methods.

Summary Description: This is a certification by the contractor to the procuring agency that the contractor or any of its sub-contractors have not in the past and will not in the future use Federal funds to influence, or attempt to influence, any employee of a Federal agency or any member or employee of Congress in obtaining a Federal award, grant or contract.

What To Do With This Form: This form is included in the bid package to prospective offerors, and a copy of the completed **bidder/proposer** certification must be kept in the procuring agency's file for each procurement. In addition, the procuring agency submits the completed form with other documentation to obtain WisDOT concurrence with the procurement.

Lobbying Certification

(Required for Procurements of \$100,000 or More)
(Bidder/proposer certifies)

The Bidder or Offeror certifies, to the best its knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a Federal department or agency, a Member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a Member of the U.S. Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification thereof.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U. S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$ 100,000 for each such failure.

THE BIDDER OR OFFEROR, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE BIDDER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. § 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Signature of the Bidder or Offeror's Authorized Official

Name and Title of the Bidder/Proposer's Authorized Official

Date

Disadvantaged Business Enterprise (DBE) Certification

*(Required for Procurements of \$250,000 in Capital or \$100,000 in Planning)
(Bidder/proposer and manufacturer certifies)*

Applicability: This certification applies to Department of Transportation assisted contracts, and to Federal Transit Administration **recipients of at least \$250,000 in capital and operating funds, or \$100,000 in FTA planning funds.** This form is identical for both the IFB and RFP procurement methods.

Summary Description: The procuring agency and its contractors use this form to certify that they will not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in awarding a contract, and that they will take reasonable and necessary steps to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 23 will have the opportunity to participate in the performance of Federal contracts.

What To Do With This Form: The procuring agency and contractors will document compliance with this program, and keep records in their files for each procurement. In addition, the procuring agency submits the completed form with other documentation in order to obtain WisDOT concurrence with the procurement. Contractors must submit to the Federal Transit Administration a statement of its goals around the DBE provisions, and the DBE policies of any sub-contractors it may use.

DBE Approval Certification
(Bidder/proposer and manufacturer)

I hereby certify that the Offeror has complied with the requirements of 49 CFR 23.67, Participation by Disadvantaged Business Enterprises in DOT Programs, and that its goals have not been disapproved by the Federal Transit Administration.

_____ Signature of the **Manufacturer's** Authorized Official

_____ Name and Title of the **Manufacturer's** Authorized Official

_____ Date

_____ Signature of the **Bidder/Proposer's** Authorized Official

_____ Name and Title of the **Bidder/Proposer's** Authorized Official

_____ Date

Pre-Award/Post-Delivery Buy America Compliance Certification***(Required From Subrecipient)******(Required Form for Procurements of \$100,000 or More)***

Applicability: This form should be included with vehicle procurements only. It assures WisDOT that the procurement process is in compliance with FTA Pre-Award and Post-Delivery Audit Requirements.

Summary Description: Subrecipient must submit this form twice, if applicable, to WisDOT. It is submitted once to obtain concurrence at the pre-award phase of the procurement. It is submitted again at the post-delivery phase so that WisDOT can approve reimbursement.

Title 49 of the CFR, Part 663 - Subpart B, requires the subrecipient to certify that the vehicle(s) to be purchased from the manufacturer meet or exceed the requirements of the Buy America law under Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. Procurement of rolling stock must have a minimum of 60 percent domestic content and final assembly must take place in the United States. Effective on July 24, 1995, all revenue stock purchases below the federal small purchase threshold of \$100,000 are exempt from the Buy America law requirements.

The subrecipient must obtain from the manufacturer and review information on the proposed (pre-award) cost of components and sub-components and the location of final assembly to confirm that Buy America requirements will be met. It must again obtain from the manufacturer and review information on the actual post-delivery cost of components and sub-components, and the location of final assembly, to confirm that Buy America requirements have been met.

What To Do With This Form: This form is initially executed by the subrecipient and included in the pre-award review packet sent to WisDOT. The procuring agency again executes this form following receipt of the vehicle(s), and submits with other documentation in order to obtain reimbursement from WisDOT.

Pre-Award/Post- Delivery Buy America Compliance Certification

*(Required for Procurements of \$100,000 or More)
(Subrecipient Certifies)*

Pre-Award Buy America Compliance Certification:

As required by U.S.C. Section 5323(l) and 49 CFR Part 663 _____
_____ (the subrecipient) is satisfied that the vehicles to be purchased, _____
_____ (number and description of vehicles)
from _____ (the manufacturer), comply with the Buy
America requirements contained in 49 U.S.C. Section 5323 (j) (2) (c) and the requirements of Section
165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. Further, the recipient or
its agent has reviewed documentation provided by the manufacturer, which lists (1) the **proposed**
component and subcomponent parts of the vehicles identified by the manufacturer, their country of
origin, and cost; and (2) the **proposed** location of the final assembly point for the vehicles, including a
description of the activities that will take place at the final assembly point, and the cost of final
assembly.

Post-Delivery Buy America Compliance Certification:

As required by U.S.C. Section 5323(l) and 49 CFR Part 663 _____
_____ (the subrecipient) is satisfied that the vehicles to be received, _____
_____ (number and description of vehicles)
from _____ (the manufacturer), meet the requirements of
49 U.S.C. Section 5323 (j) (2) (c) and of Section 165(b)(3) of the Surface Transportation Assistance
Act of 1982, as amended. Further, the recipient or its agent has reviewed documentation provided by
the manufacturer, which lists (1) the **actual** component and subcomponent parts of the vehicles
identified by the manufacturer, their country of origin, and cost; and (2) the **actual** location of the final
assembly point for the vehicles, including a description of the activities that took place at the final
assembly point, and the cost of final assembly.

Date: _____

Name: _____

Signature: _____

Title: _____

Subrecipient Name: _____

Pre-Award/Post-Delivery Purchaser's Requirements Certification***(Required From Subrecipient)******(Required for Procurements of \$100,000 or More)***

Applicability: This form should be included with vehicle procurements only. It assures WisDOT that the procurement process is in compliance with FTA Pre-Award Audit Requirements and Post-Delivery Review Requirements.

Summary Description: Subrecipient must submit this form twice, if applicable, to WisDOT to obtain concurrence during the pre-award phase of the procurement and again at the post-delivery phase. The subrecipient is responsible for ensuring that the vehicle(s) purchased meets the procurement agency's specifications, including any addenda. The manufacturer's proposed vehicle specifications must be verified against the bid specifications (pre-award), and again following vehicle delivery.

What To Do With This Form: This form should be executed by the subrecipient ***prior to awarding a contract to the selected bidder/proposer***. The procuring agency submits the completed form with other documentation in order to obtain WisDOT concurrence with the proposed contract award. This form is then executed a second time to certify that the vehicle(s) delivered meet agency specifications. This certification is submitted with other documents at the time the subrecipient requests reimbursement.

Pre-Award/Post Delivery Purchaser's Requirements Certification

*(Required for Procurements of \$100,000 or More)
(Subrecipient Certifies)*

Pre-Award

As required by Title 49 U.S.C. Section 5323 (l) and 49 CFR Part 663, _____
(the subrecipient) certifies that the vehicles *to be purchased* from _____
_____ (the manufacturer) are the same product described in the
subrecipient's solicitation specifications, and any approved addenda. Further the subrecipient certifies
that the proposed manufacturer is a responsible manufacturer has the capacity to produce a vehicle that
meets the specifications.

Date: _____

Name: _____

Signature: _____

Title: _____

Subrecipient Name: _____

Post-Delivery

As required by Title 49 U.S.C. Section 5323 (l) and 49 CFR Part 663, _____
(the subrecipient) certifies that the vehicles *purchased* from _____
_____ (the manufacturer) are the same product described in the
subrecipient's solicitation specifications, and any approved addenda. The subrecipient further certifies
that, after visually inspecting and road testing the contract vehicle(s), that they meet the contract
specifications.

Date: _____

Name: _____

Signature: _____

Title: _____

Subrecipient Name: _____

Pre-Award/Post-Delivery FMVSS Compliance/Exemption Certification***(Required From Subrecipient)******(Required for Procurements of \$100,000 or More)***

Applicability: This form should be included with vehicle procurements only. It assures WisDOT that the procurement process is in compliance with FTA Pre-Award Audit and Post-Delivery Review Requirements.

Summary Description: Subrecipient must submit this form twice, if applicable, to WisDOT to obtain concurrence during the pre-award phase of the procurement and at the post-delivery phase.

If the vehicle(s) purchased is subject to the Federal Motor Vehicle Safety Standards (FMVSS), the subrecipient must, at both the pre-award stage and at the post-delivery stage, obtain a copy of the manufacturer's self certification sticker information. Prior to awarding a contract to a bidder/proposer and then again after delivery of the vehicle(s), the subrecipient must complete this certification that it has received the manufacturer's self certification that the vehicles will comply or do not comply with FMVSS.

If the vehicle(s) purchased are not subject to the Federal Motor Vehicle Safety Standards (FMVSS), the subrecipient must, at both the pre-award stage and at the post-delivery stage, obtain a statement of such from the manufacturer. Prior to awarding a contract to a bidder/proposer and then again after delivery of the vehicle(s), the subrecipient must complete this certification that it has received the manufacturer's self certification that the vehicle(s) are exempt from FMVSS.

What To Do With This Form: This form should be executed by the subrecipient prior to awarding a contract to the selected bidder/proposer. The procuring agency submits the completed form with the other documentation in order to obtain WisDOT concurrence with the procurement. The post-delivery certification is completed after delivery of the vehicle(s), and should accompany the subrecipient's request to WisDOT for reimbursement.

Pre-Award/Post Delivery FMVSS Compliance/Exemption Certification

(Required for Procurements of \$100,000 or More)
(Required for Procurements of Buses or Modified Vans)
(Subrecipient Certifies)

Certification of Compliance with FMVSS:

As required by Title 49 CFR, Part 663, _____ (subrecipient name) certifies that it received and examined, at the **pre-award / post-delivery stage** (*circle one*) a copy of _____'s (the manufacturer) self-certification stating that the vehicles, _____ (number and description of vehicles) **will comply with the relevant Federal Motor Vehicle Safety Standards** in Title 49 CFR, Part 571.

Date: _____

Name: _____

Signature: _____

Title: _____

Subrecipient Name: _____

Certification of Exemption from FMVSS:

As required by Title 49 CFR, Part 663, _____ (subrecipient name) certifies that it received and examined, at the **pre-award / post-delivery stage** (*circle one*) a statement from _____ (the manufacturer) indicating that the vehicles, _____ (number and description of vehicles) **are not subject to Federal Motor Vehicle Safety Standards** in Title 49 CFR, Part 571.

Date: _____

Name: _____

Signature: _____

Title: _____

Subrecipient Name: _____

Post-Delivery Purchaser's Requirements Certification for More Than Ten Buses or Modified Vans

***(Required From Subrecipient)
(Required for Procurements of \$100,000 or More)***

Applicability: This form should be included with vehicle procurements only. It assures WisDOT that the procurement process is in compliance with FTA Post-Delivery audit requirements.

Summary Description: Subrecipient must submit this form, when procuring more than ten buses or modified vans.

The subrecipient is responsible for ensuring that the vehicles purchased meet the procurement agency's specifications and addenda. An in-plant inspection of the final assembly process and the resident inspector's final report on construction activities, together with a visual inspection and road test must be conducted to demonstrate that the vehicles meet the contract specifications and requirements.

What To Do With This Form: This form should be executed by the subrecipient prior to accepting final delivery of the vehicles. The procuring agency submits the completed form with other documentation in order to obtain WisDOT reimbursement.

Post-Delivery Purchaser's Requirements Certification for More Than Ten Buses or Modified Vans

(Required for Procurements of \$100,000 or More)
(Subrecipient Certifies)

As required by Title 49 CFR, Part 663 - Subpart C, _____
(the subrecipient) certifies that a resident inspector, _____
_____ (the inspector - not an agent or employee of the manufacturer),
was at _____'s (the manufacturer)
manufacturing site during the period of manufacture of the vehicles, _____
_____ (number and description of vehicles). The inspector
monitored manufacturing and completed a report on the manufacture of the vehicles providing accurate
records of all construction activities. The report addresses how the construction and operation of the
vehicles fulfill the contract specifications. **After reviewing the report, visually inspecting the
vehicles, and road testing the vehicles, the recipient certifies that the vehicles meet the contract
specifications.**

*(If the subrecipient is purchasing more than ten (10) buses or modified vans, a resident inspector must
monitor the final assembly process and prepare a final report of construction activities)*

Date: _____

Name: _____

Signature: _____

Title: _____

Subrecipient Name: _____

Post-Delivery Purchaser's Requirements Certification
(Required Form for Procurements of \$100,000 or More)
(Required Form for Procurements of Ten or Fewer Buses or Modified Vans)
(Subrecipient Certifies)

As required by Title 49 of the CFR, Part 663 - Subpart C, **after visually inspecting and road testing** the contract vehicles, _____ (specify the type of vehicle) the _____ (the subrecipient) certifies that the vehicles, _____ (number and description) from _____ (the manufacturer), are the same product described in the subrecipient's solicitation specification and meet the contract specifications.

Date: _____

Name: _____

Signature: _____

Title: _____

Subrecipient Name: _____

Procuring Agency and Contracting Officer

Applicability: *This form is provided for your information as a suggested form. Its use is not specifically required by WisDOT.*

Summary Description: The "Procuring Agency and Contracting Officer" form provides prospective bidders with important information regarding the procurement including the agency's name, address, phone number, and the contact person or contracting officer. This form describes the type and scope of the procurement, and gives dates for communications with the agency, bid conference and proposal due dates.

What To Do With This Form: The procuring agency provides this information to bidders in the bid package. The agency should send a copy of the completed form to WisDOT along with other required forms in the bid/RFP packet. A copy of the completed form should also be kept in the agency's file for each procurement.

Procuring Agency and Contracting Officer
(Sample Form)

Request For Proposals (RFP or IFB) No: _____

Date: _____

Procuring Agency: _____
Name

Address

Contracting Officer

Telephone No: _____ Fax No: _____

Scope

Procuring Agency requests proposals for (example: the manufacture and delivery of transit buses/spare parts) in accordance with the terms and conditions set forth below. The Contract shall be a firm-fixed price Contract.

Solicitation Schedule

The following is the solicitation schedule for Offerors:

Pre-Proposal Conference

(insert date and time)

Offeror Communications and Requests

due at least (fifteen days) before
proposal due date

Proposal Due Date

(insert date and time)

Pre-Proposal Conference

A pre-proposal conference will be held by the Procuring Agency at _____
and at the time specified in "Solicitation Schedule", above. (address)

Request for Change or Approved Equal

Applicability: *This form is provided for your information as a suggested form. Its use is not specifically required by WisDOT.* It is to be filled out by prospective bidders/proposers only if they need clarification of the bid/proposal specifications or if they want to request changes or substitutions in completing the procurement package regarding the scope of the procurement or items being purchased. This form is identical for both the IFB and RFP procurement methods.

Summary Description: Prospective bidders/proposers have until the time indicated in the "Solicitation Schedule" to request clarification of specifications or addenda items, or changes or substitutions of brand names in items being purchased by the agency. The requests must be made in writing on the attached form as far in advance of the proposal due date as possible, and made only to the "Contracting Officer" of the procuring agency. The requests must include technical data to support any changes in the procurement package. Verbal communication between the procuring agency and prospective bidders is to be done at the pre-bid conference. After that, all communication will be in writing only.

What to do With This Form: This form is to be sent in the bid package by the procuring agency with the IFB or RFP numbers included on the form. If prospective bidders submit the form to the procuring agency for changes or clarification, copies of the completed form must be kept in the procuring agency's file for each procurement. The agency should also send a copy of the completed form to WisDOT together with other forms in order to obtain concurrence/approval of the RFP/IFP procurement packet.

Request for Change or Approved Equal
(Sample Form)

Request # : _____ Offeror: _____

Solicitation Ref. _____ Page: _____ Section: _____

Questions/Clarification or Approved Equal: _____

Procuring Agency Response: _____ Approved _____ Denied

Comments: _____

Acknowledgment Of Addenda

Applicability: *This form is included as a suggested form and is not specifically required by WisDOT.* It is included in the bid package to prospective bidder/proposers. It should be signed by bidders/proposers and returned to the procuring agency to acknowledge any addenda to the bid or proposal specifications made by the procuring agency during the bid process. If addenda is not acknowledged in writing on this form, the bid or RFP process may be considered nonresponsive and possibly rejected. This form is identical for both the IFB and RFP procurement methods.

Summary Description: The procuring agency may modify the bid solicitation document at any time prior to the receipt of bids. The "Acknowledgment of Addenda" form is a signed acknowledgment by the offeror that he/she has received any amendments made by the procuring agency. Changes made in the contract specifications will not be considered official unless they are made in writing by the procuring agency and acknowledged by the bidding contractor on this form. The proposal deadlines and bid opening dates may be affected by an addenda revision. The procuring agency may have to change the deadline to allow bidders time to revise their proposals. The final deadline and bid opening date should be at least five days after the last addendum.

What to do with this form: Copies of this form returned by bidders/proposers must be kept in the procuring agency's procurement file for each procurement. The agency should also send a copy of the completed form to WisDOT together with other forms in order to obtain concurrence before a contract is awarded to the selected bidder/proposer.

Acknowledgment Of Addenda
(Sample Form)

The undersigned acknowledges receipt of the following addenda to the documents in Request # _____:

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Offeror: _____
Name

Street Address

City, State, Zip

Signature of Authorized Officer

Title

Date

Phone Number

Offeror Service and Parts Support Data

Applicability: *This form is included as a suggested form, not specifically required by WisDOT.* It should be filled out by all prospective bidders/proposers as an informational piece for the procuring agency. This form is identical for both the IFB and RFP procurement methods.

Summary Description: This form is for prospective bidders/proposers to use in providing the procuring agency information regarding parts and services for the equipment to be purchased. The bidder will name the representative responsible for assisting the procuring agency in the area of service, as well as providing a listing of the names and locations of the nearest distribution and service centers to the procuring agency for parts and repair services.

What To Do With This Form: Copies of completed forms must be kept in the procuring agency's file for each procurement. The agency should also send a copy of the completed form to WisDOT together with other forms in order to obtain concurrence before a contract is awarded to the selected bidder/proposer.

Offeror Service and Parts Support Data
(Sample Form)

Location of nearest Technical Service Representative to Procuring Agency

Name _____

Address _____

Telephone _____

Offeror to describe technical services readily available from said representative.

Location of nearest Parts Distribution Center to Procuring Agency

Name _____

Address _____

Telephone _____

Offeror shall describe the extent of parts available at said center.

Policy for Delivery of Parts and Components to be Purchased for Service and Maintenance

Regular Method of Shipment _____

Cost to Procuring Agency _____

Form for Proposal Deviation

Applicability: ***This form is suggested, but not required, by WisDOT.*** It is used by the Offeror when submitting any deviations to the original proposal when using *an RFP Procurement method.*

Summary Description: A proposer may submit to the procuring agency a proposal containing exceptions or alternative measures to the original procurement package with an explanation for each deviation and how it will meet the specifications. This alternative proposal will not be submitted in place of the original bid or proposal specifications, but in addition to it. For each alternative proposal, a Form for Proposal Deviation will be submitted along with a separate Price Schedule following Price Proposal Requirements.

What To Do With This Form: Copies of this form completed by the Contractor must be kept in the procuring agency's file for each procurement. The procuring agency should also send a copy of the completed form to WisDOT together with other forms in order to obtain concurrence before a contract is awarded to the selected proposer.

Form for Proposal Deviation
(Sample Form)

The following form shall be completed for each condition, exception, reservation or understanding (i.e., deviation) in the proposal. One copy without any price/cost information is to be placed in the technical proposal, and a separate copy with any price/cost information is placed in the price proposal.

Deviation # : _____	Offeror: _____
Solicitation Ref: _____	Page: _____ Section: _____
Complete Description of Deviation: _____	
Rationale (Pros & Cons): _____	

Pricing Schedule

Applicability: *This form is suggested, but not required, by WisDOT.* It is to be filled out by all prospective bidders/proposers and provided in the bid/proposal to the procuring agency. This form is identical for both the IFB and RFP procurement methods.

Summary Description: A breakout of the price of equipment or of the goods and services being purchased must be provided by prospective bidders/proposers. The price schedule will include applicable local and state taxes as well as the delivery costs of the goods and services. The procuring agency will provide prospective bidders with a list of applicable local and state taxes for use in the price schedule.

What To Do With This Form: Copies of this completed form must be kept in the procuring agency's file for each procurement. The agency should also send a copy of the completed form to WisDOT together with other forms in order to obtain concurrence before a contract is awarded to the selected bidder/proposer.

Pricing Schedule
(Sample Form)

Procuring Agency to insert Pricing Schedule.

Offer and Award

Applicability: ***This form is suggested but not required by WisDOT.*** It is to be completed by the bidder/proposer when submitting a Bid/Proposal to the procuring agency. It becomes the procuring agency's formal acceptance of the bid or proposal by the offeror when signed by the procuring agency. This form is identical for both the IFB and RFP procurement methods.

Summary Description: When this offer form is signed and submitted to the procuring agency, the bidding contractor offers to provide the goods and services specified in the bid documents. The formal acceptance of a bidder/proposer's offer by the procuring agency is done by signing the award portion of the form following WisDOT concurrence with the bidder/offeror selection. The award is either delivered in person or sent by registered mail to the successful contractor.

What To Do With This Form: This form is included in the bid package to prospective bidders with the procuring agency's name and IFB or RFP numbers inserted. All offers made on this form by bidders are to be kept in the files of the procuring agency's file for each procurement. The agency should also send a copy of the completed form to WisDOT together with other forms in order to obtain concurrence before a contract is awarded to the selected bidder/proposer. After WisDOT concurrence, the executed Award form must also be placed in the procurement file.

Offer and Award
(Sample Form)

OFFER

By execution below, Offeror hereby offers to furnish equipment and services as specified in *(insert Procuring Agency name) Request for Proposals No. (Procuring Agency insert IFB or RFP Number)*.
Offeror also certifies that, if selected, it will execute the forms required by WisDOT for Overall Federal Regulation Compliance, Pre-Award Audit, and Post-Delivery Audit.

Offeror: _____
Name

Street Address

City, State, Zip

Signature of Authorized Officer

Title

Date

Phone Number

AWARD

By execution below, Procuring Agency accepts the Offer as indicated above.

Contracting Officer

Date

Checklist for Pre-Bid/Pre-Proposal Process

(to be submitted to WisDOT with draft procurement packet)

Process Summary (subrecipient checks \checkmark all elements that apply)

- _____ 1. Develop specifications with the department initiating the procurement (these specifications must be detailed) (IFB)
- _____ 2. Determine goals and objectives and the scope of work for the goods and/or services to be procured with the department initiating the procurement (RFP)
- _____ 3. Develop guidelines describing the goods or services sought (these guidelines are not as detailed as an IFB) (RFP)
- _____ 3. Determine all local, state and federal requirements
- _____ 4. Determine agency capabilities to manage the procurement
- _____ 5. Create an evaluation committee represented by all interested departments or personnel
- _____ 6. Assign responsibilities to committee members/others
- _____ 7. Develop IFB/RFP document that complies with state and federal, legal and administrative requirements as well as requirements of the goods or services being procured
- _____ 8. Develop the evaluation criteria
- _____ 9. Develop the protest procedures
- _____ 10. Identify potential bidders
- _____ 11. Prepare solicitation notice
- _____ 12. Final review of IFB/RFP document by committee members
- _____ 13. **Send procurement packet to WisDOT for review**

Subrecipient Name: _____

Subrecipient Representative Name and Title: _____

Subrecipient Representative Signature: _____

Date: _____ Phone: (_____) _____ - _____

Subrecipient Pre-Award Review Checklist

(to be submitted to WisDOT together with letter requesting concurrence with Contractor Selection)

Subrecipient Name: _____

Procurement of : _____

Section 53 _____ Program Subrecipient IFB / RFP (circle one) number _____

FTA grant contract(s): WI - _____ - _____; WI - _____ - _____; WI - _____ - _____

Copies of the following documents shall accompany this checklist and your letter requesting WisDOT's concurrence with the selected Bidder/Proposer (**check** ☒ all that apply):

- _____ 1. Bid / Request for Proposals or Quotation as submitted by bidder/proposer
- _____ 2. Scoring of Bid / Request for Proposals / Quotations (if applicable)
- _____ 3. Affidavit of Publication (Purchases over \$10,000)
- _____ 4. List of Bidders/Proposers / Dealers / Contractors who received a copy of the solicitation or notice
- _____ 5. List of Bidders/Proposers / Dealers / Contractors who received a copy of the procurement packet
- _____ 6. All required signed certifications from Bidder/Proposer and/or subrecipient as appropriate:
 - _____ Overall Federal Regulation Compliance (**certifications from subrecipient and bidder/ proposer**)
 - _____ Certification of Compliance with Specifications (**certification from bidder/proposer**)
 - _____ Certification of Compliance with Bus Testing Requirements (**certification from manufacturer**)
 - _____ Buy America Certifications (**certifications from manufacturer and subrecipient**)
 - _____ Debarment and Suspension Certification (**certification from bidder/proposer**)
 - _____ Lobbying Certification (**certification from bidder/proposer**)
 - _____ DBE Certification (**certification from bidder/proposer and manufacturer**)
 - _____ Pre-Award Buy America Compliance Certification (**certifications from subrecipient**)
 - _____ Pre-Award Purchaser's Requirements Certification (**certifications from subrecipient**)
 - _____ Pre-Award FMVSS Compliance or Exemption Certification (**certifications from subrecipient**)
 - _____ Other (list) _____
- _____ 7. Applicable documentation (i.e. Altoona Test Results, Bid bond, performance bond, etc.)(list) _____
- _____ 8. Review Committee Evaluation Forms _____

Subrecipient Representative Name and Title: _____

Subrecipient Representative Signature: _____

Date: _____ Phone: (_____) _____ - _____

Checklist of Post-Delivery Audit - Reimbursement Process*(to be submitted to WisDOT together with letter requesting reimbursement)*

Upon delivery of goods or services, subrecipient completes and submits the following documentation to WisDOT for review:

- _____ Copy of Purchase Order or a sales contract
- _____ Copies of any change orders
- _____ WisDOT post-delivery audit forms (see Appendix D)
 - _____ Post-Delivery Buy America Compliance Certification
 - _____ Post-Delivery Purchaser's Requirements Certification
 - _____ Post- Delivery FMVSS Compliance or Exemption Certification
 - _____ Post Delivery Purchaser's Requirements Certification (more than 10 buses or modified vans)
- _____ Copy of bidder/proposer invoice(s)
- _____ Copy of checks or other payment documentation
- _____ Copy of the DMV Application for Title/Registration (WisDOT vehicle lien requirement for Section 5311 subrecipients)
- _____ Completed copy of this checklist
- _____ Letter requesting federal share as per the grant contract
- _____ Any other supporting documentation as applicable

Subrecipient Name: _____

Subrecipient Representative Name and Title: _____

Subrecipient Representative Signature: _____

Date: _____ Phone: (_____) _____ - _____

5.11 PROCUREMENT CONTRACT ELEMENTS

Offer, Acceptance, and Consideration

Offer, acceptance and consideration are three essential elements of a contract.

Offer - The offer to enter into a contract can be made by either party to the contract. In third party contracting, the offer is generally not made by the subrecipient. The subrecipient issues solicitations for offers either by an Invitation for Bid (IFB) or a Request for Proposal (RFP). The offer is made when the contractor submits a signed bid or proposal in response to the subrecipient's solicitation. In small purchases, however, the roles are reversed. The subrecipient issues a purchase order, which is an offer, to buy supplies or services at a specified price (usually obtained by a Request for Quotation).

The party to whom the offer is made, the offeree, may accept the offer until it is terminated by the offeror. Termination of an offer can occur in one of many different ways:

Expiration - the offer is not accepted within the specified time period or within a reasonable time, if no time period is stated.

Revocation - the offeror may withdraw the offer. The withdrawal is effective when received by the offeree.

Generally, the revocation may occur at any time prior to acceptance by the offeree.

Rejection - the offeree may reject the offer, and the rejection is effective when received by the offeror.

Counter-offer - the offeree proposes new terms, not an inquiry regarding the possibility of new terms.

The offeree's counter-offer to the offeror is effective when received by the offeror.

Death - the offer is terminated when either the offeror or offeree dies. However, the offer passes to the personal representative of the offeree's estate in an option contract.

Illegality - the offer is void if the subject matter is illegal.

Destruction - the offer is terminated if the subject matter is destroyed.

Acceptance - The offer must be accepted unequivocally. The offeree must accept the offer without changing or qualifying the terms of the offer. If the terms are changed, the offer is rejected and a counter-offer is made. This terminates the original offer.

The offer may be accepted by any reasonable means of communication (i.e., fax, telephone, etc.) unless the offeror indicates a specific method of acceptance. As a general rule, the acceptance is effective when mailed by the offeree, except where the offeror specifies the acceptance must be received by a specific date and time.

Subrecipient procurements involve two processes for acceptance of offers. When the subrecipient has issued an IFB or RFP, acceptance occurs when the subrecipient assents to the terms made by the bidder or offeror in its bid or proposal. The subrecipient accepts the offer by signing the contract and issuing the offeror a notice of award. For small purchases the contractor accepts the offer made by the subrecipient in its purchase order by either signing the order (contract), if so required by the purchase order, or by actually performing in accordance with the terms of the purchase order.

Consideration - Each party must give consideration for an agreement to be a contract. Consideration exists when something of value is given up in a bargained-for exchange. The following must exist:

Legal benefit. Someone receives something they had no prior legal right to receive.

Legal detriment. Someone gives up something they did not have to relinquish. This detriment does not have to involve a tangible detriment, only a legal detriment.

**WISCONSIN DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION INVESTMENT MANAGEMENT
BUREAU OF TRANSIT AND LOCAL ROADS**

**WISDOT FUNDING POLICY REGARDING
AUTOMATED VEHICLE LOCATION SYSTEMS (AVL) AND OTHER INTELLIGENT
TRANSPORTATION SYSTEMS (ITS)
PROPOSED BY PUBLIC TRANSIT OPERATORS**

Introduction

Through a series of ten nationwide outreach meetings, the USDOT (Federal Highways and Federal Transit Administrations) has attempted to build a level of awareness about the National ITS Architecture and a consistency requirement. The National ITS Architecture defines both the functions performed in implementing ITS, and the information flows between transportation subsystems in four major surface transportation areas: operation centers, travelers, vehicles, and roadsides. Through consistency with the National ITS Architecture, transportation agencies as well as travelers can reap the benefits of easier integration of their transportation systems, more efficient use of the available resources, improved operations and stakeholder involvement. ITS standards ensure that AVL/ITS subsystems at different locations and with components from different bidders/proposers can communicate and exchange information.

At the same time that the varied AVL technologies are being sold by different bidders/proposers, the USDOT has concerns and is discussing consistency and standards which would promote interoperability on a regional basis. While USDOT will continue their discussion of hardware and software standards, FHWA and FTA have emphasized that regional coordination and cooperation must occur before purchase and implementation of ITS systems that are funded by the Federal government.

The highlights of the guidance provided to attendees at the sessions are as follows:

- Prior to purchase of the AVL/ITS equipment, regional information exchange and outreach to partners and potential partners must take place to allow for cooperation and coordination to occur.
- Federal technology standards shall be followed to allow add-ons of other local/regional partners in a “plug and play” manner.
- Mainstream technologies that ensure continued support even if the selected bidder/proposer is no longer in the ITS business in the future shall be obtained and utilized (e.g. Rockwell recently ended their AVL business).

WisDOT Policy

In an effort to support the USDOT’s integrated implementation of ITS technology, WisDOT has developed the following guidelines for the deployment of AVL/ITS technology. It is WisDOT’s policy that federally funded AVL/ITS transit projects conform to the FTA standards and guidance provided by the USDOT Federal Highways and Federal Transit Administrations as they become available. It is not WisDOT nor the USDOT intent to prescribe specific equipment or data. Since this is a changing

technology and given the concerns for conformity to national standards, proposals for transit projects involving AVL/ITS will be subject to an extensive review by WisDOT staff both at the planning and project stages.

Transit agencies seeking to establish an AVL/ITS system with state operating assistance and/or federal capital or operating grants administered by WisDOT shall comply with the following requirements:

Planning Phase

1. A regional coordinating committee shall be formed with partners, potential partners and stakeholders to address cooperation and coordination of systems integration, future expansion and consistency with the IT Conceptual Design for Transit adopted by WisDOT. The roles and responsibilities of the agencies involved in sharing the AVL technology shall be defined. Other issues to be addressed by this group should be:
 - organizational changes - internal/external
 - phasing considerations, both geographic and functional
 - regional technology agreements including responsibility for maintenance costs
 - Relationship to capital improvement projects
2. WisDOT staff shall be involved throughout the planning phase of the project (i.e., Policy Committee, etc.).
3. A description of existing and planned AVL projects and other ITS enhancements shall be developed, including both:
 - Physical inventory (e.g. automated passenger counters, on board-display, safety features, etc.)
 - Sharing of information (e.g. sharing of information with the traffic control center and with police stations and emergency dispatch center, etc.).
4. The regional ITS architecture shall be defined at the following levels:
 - Subsystems (e.g. AVL system, traffic management, transit management, etc.)
 - Architecture flows (information exchanges between subsystems)

Project Phase

1. Project design shall be in compliance with all applicable federal, state, and local laws and regulations.
2. WisDOT shall review and authorize all plans, specifications, and estimates prior to commencement of the procurement process.
3. The procurement of consulting services or engineering services associated with the project shall meet all FTA requirements under Third Party Contracting Requirements, Circular 4220 and any applicable regulations.
4. The procurement of the transit AVL/ITS hardware and software associated with the project shall meet all FTA requirements under Circular 4220 and any applicable regulations.

5. Grantees shall ensure that the AVL/ITS system their agency is purchasing is in conformance with National ITS architecture and can be updated, expanded and exchanged with other bidders/proposers. In addition, grantees shall take appropriate steps to ensure maintenance and ongoing support are addressed with the selected contractor(s). In the procurement documents, a minimum of three (3) year system support is required including trouble shooting and software updates.
6. Contracting documents shall spell out the main objectives of the transit agency or regional coordinating committee in acquiring AVL/ITS technology. These documents should also outline the concept, method, equipment capabilities, training, warranty and system support.
7. The scope of work shall be detailed and should outline basic requirements as follows:
 - In-vehicle units (how many AVL units that will be installed in the transit buses)
 - Communications Link
 - Dispatch center console
 - Documentation
 - Services to be provided
8. WisDOT staff shall be involved throughout the project phase (i.e. ITS Project Steering Committee, etc.)
9. Grantees shall detail the measurements they will use to evaluate the effectiveness of the system. These shall be established by the Project Coordinating Committee in consultation with WisDOT.
10. In demonstration projects as well as projects funded after the initial demonstrations, the benefits of AVL/ITS shall be evaluated based on pre and post implementation assessments. The lessons learned will be beneficial to local and state decision makers, as well as the general public. This information would also be beneficial in the planning and implementation of other regional AVL/ITS projects in the state.

**WISCONSIN DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION INVESTMENT MANAGEMENT
BUREAU OF TRANSIT AND LOCAL ROADS**

MANAGEMENT FEE POLICY FOR TAXI SERVICES

The WisDOT Bureau of Transit and Local Roads, under its statutory and Administrative Rule responsibilities, formally adopts this "Management Fee" policy for state and federal operating assistance. This policy is designed to promote efficient operation of shared-ride taxi services, and other public transportation services, contracted to private operators in Wisconsin. In addition, this policy applies consistent, measurable criteria to the grant application line item (503.01 Management Fee). As a result, the following policy is instituted:

- A baseline seven percent (7%) of the negotiated net operating cost will be in effect for all shared-ride taxi systems contracted to private operators. Net operating cost, for this purpose, includes all allowable costs excluding:
 1. management fee;
 2. city administration;
 3. depreciation; and
 4. return on investment
- The management fee is available upon request of the municipality. This fee provides a standard for the efficient operation of shared-ride taxi systems. In order to be granted a management fee, **the applicant** (sponsoring municipality) must request the fee.
- Additional management fee, beyond the 7% baseline, may be added in half percent increments for transportation service contractors that achieve cost efficiencies. Top performers will be granted up to an additional three percent (3%). The additional management fee will be calculated using an *audited* revenue-to-cost ratio from the previous or most recent year for which this information is available. This policy will reward those systems that run a more efficient operation. The total management fee amount will be based upon the following efficiency ratings:

Revenue to Cost Ratio:	< 25%	25 - 29.9%	30 - 34.9%	35 - 39.9%	40 - 44.9%	45 - 49.9%	> 50%
Management Fee (% of net Operating Expense:	7.0	7.5	8.0	8.5	9.0	9.5	10.0

- ***The maximum allowable management fee is ten percent (10%), with the following exception:***

A "red circle policy" will be in effect to "hold harmless" present operators ensuring that no operator will in the future be granted a management fee at a lower dollar amount than they received in 1994, unless a lower fee is requested by the sponsoring municipality. This will have the effect of "freezing" the management fees of some operators, until their efficiencies reach or surpass the baseline efficiency.

- Once the management fee exceeds the "red circle" amount due to increased efficiencies, the "hold harmless" policy is no longer in effect for that operator.
- The management fee policy sets forth the maximum amount which will be granted. Sponsoring municipalities requesting lower fees will be granted the fee which is requested.
- ***This policy is in effect for negotiated contracts only.***

The overall ten percent (10%) cap on management fees is a specific maximum spelled out in the Federal Acquisition Regulations for operations that are not experimental, developmental, or research oriented and are therefore not considered to have a high level of risk. Because state and federal operating assistance combined with local contributions and fares (revenue) assure the operator little or no financial risk for providing transportation services to a municipality, the ten percent (10%) maximum applies.

- The management fee is intended to provide reimbursement for the following responsibilities:
 1. All general administrative and managerial activities;
 2. Full compliance with all state and federal program requirements and guidelines;
 3. Accurate and timely submission of all local, state, and federally required reports;
and
 4. Accurate and timely accounting and record keeping procedures.
- If a new transportation service operator is selected through the required competitive bid process, the management fee will be calculated for subsequent contract years of operation beyond the bid period, based on: the documented expenses and revenues from the bid year(s) of service. Under no circumstance is a new operator entitled to receive a management fee based upon the efficiencies of the previous operator.
- If the ownership of an existing transportation operation/provider changes, the management fee of the new owner will be calculated based on seven percent (7%).
- Audits of operations/providers under new ownership shall be scheduled as soon as practicable to assist in the establishment of the management fee. These audits will have priority over audits of continuing transportation operations.

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